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A circular stamp from the Environmental Quality Center. The outer ring contains numbers 1 through 24. The center features the text "Environmental Quality Center" and "NOV 2002". There is also a small clock face graphic.

STATE CAPITOL
CHEYENNE, WY 82002

November 13, 2002

Dear Management Council:

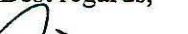
In accordance with advice from the Office of the Attorney General, I have elected to exercise my line item veto authority with regard to the change made to Appendix A, Appendix IV, of this rules package.

Specifically, I have vetoed the following language because it does not comply with the Wyoming Administrative Procedure Act:

“The United States Fish and Wildlife Service (USFWS) has declared several plant species which exist within Wyoming as threatened, endangered or proposed threatened under the Federal Endangered Species Act. The list of species and their accompanying status can change over time. Therefore, rather than try to keep an updated list within this Appendix, the Land Quality Division advises coal mine permit applicants to contact the USFWS office in Cheyenne for the most current compilation of plant species listed by the USFWS prior to conducting the vegetation baseline sampling for a coal permit application or amendment. The phone number for this office is (307) 772-2374.”

The amendment failed to reference the incorporated matter by “location, date and otherwise” and also failed to include the statement that the proposed rule did not “include any later amendments or editions of the incorporated matter.” Both failures caused the change in Appendix A to be substantially non-compliant with WYO. STAT. 16-3-103(h).

Best regards,

Best regards,

Jim Geringer
Governor

JG:jb:sg





BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

September, 2002



FILED

SEP 3 0 2002

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE)
PROPOSED REVISION OF)
THE LAND QUALITY)
DIVISION RULES RELATED)
TO THE REGULATION OF)
COAL MINING)

STATEMENT OF PRINCIPAL
REASONS FOR ADOPTION

DOCKET NO. 02-4100

COAL - Chapters 1, 2, 4, 12, 18 and Appendix A

**Rule Package 1J - Roads, Mine Facilities, Excess Spoil and Threatened
and Endangered Plant Species**

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Introduction:

The Office of Surface Mining and Enforcement (OSM) has previously notified the Land Quality Division (LQD) of deficiencies existing in the Wyoming program specific to roads and road reclamation. By letter dated February 21, 1990, the OSM asked the State to submit proposed

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amendments to address these deficiencies. Authority to request proposed amendments is provided to the OSM under the Code of Federal Regulations, Title 30, § 732.17. Portions of Wyoming's program were now deficient because of changes to the Federal Rules adopted on December 8, 1988. The background and final language adopted for these rules is set forth in a Federal Register notice dated November 8, 1988 (53 FR 45190).

The state responded to the OSM's letter on May 14, 1990 with proposed revisions or explanatory information. The OSM responded on October 3, 1990. In this letter, the OSM indicated which rules still required modification and the reasoning for this request. The LQD drafted proposed rules in an attempt to satisfy the OSM required program amendments. These proposed rules were presented to the Land Quality Advisory Board on June 28, 1995. The Land Quality Advisory board voted to send the rules on to the Environmental Quality Council.

A hearing was held by the Environmental Quality Council on July 15, 1996. At this hearing, the Wyoming Mining Association, Amax Coal West, Inc. and several EQC members had a number of concerns with the rules as proposed. Major concerns included the disposition of public roads with regard to coal permitting, how to deal with existing private roads within a permit area that the operator is not using and professional engineer certification of mine facilities. After reviewing these concerns and reexamining the Federal rules pertaining to roads and mine facilities and how the OSM interprets their rules, the State is now proposing to adopt the Federal counterpart rules regarding roads and mine facilities.

Part of this package also entails the reorganizing and rewriting of rules dealing with the permitting and performance standards associated with mine facilities. This is necessary because the current LQD rules are organized in such a way that rules regarding mine facilities are intermeshed with rules regarding roads. The Federal rules have distinct subsections dealing with each. The LQD has chosen to propose rules that coincide with the counterpart Federal rules for roads. Consequently, it is also necessary that the LQD provide similar distinct sections pertaining to mine facilities to ensure that the LQD rules are no less effective than the Federal rules.

Rule amendments proposing the reorganization of rules within Chapter 4, Section 2(c) regarding temporary and excess spoil piles are presented on page 48 of this document as rule amendment number 23.

Attachment I which is presented on page 54, provides a continuous view of proposed amended portions of Chapters 1, 2 and 4 with the strike and underline presented.

Attachment II, which begins on page 72, provides a clean version (all strike and underline removed) of proposed amended portions of Chapters 1, 2 and 4.

Chapter 1

1. Proposed Rule Amendment:

A rule amendment was originally proposed to the Land Quality Advisory Board on August 23, 2001. This proposed amendment would have added explanatory language to the definition of "Ephemeral stream" defining what constitutes a "prominent" ephemeral channel. However, after extensive discussion at the Advisory Board Meeting, the Advisory Board voted that rather than amending the definition for "ephemeral stream," the following phrase would be added to appropriate rules:

"ephemeral streams that have the potential for substantial flow in response to precipitation events"

This phrase was incorporated into proposed rules which require design specifications for roadways which may cross or be built in the channel of particular ephemeral streams that are known to occasionally carry large quantities of water.

However, when this proposed language was brought before the Environmental Quality Council (EQC) at the September 20, 2002 Hearing, the EQC voted to replace this original phrase with the following language:

"ephemeral stream that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries"

This phrase has now been incorporated into the appropriate rules which follow within this document.

This number 1. is being retained without an associated amendment in order to maintain the original numbering used with the Draft Proposed Rules and Statement of Reasons brought before the Land Quality Advisory Board and recorded in the Advisory Board Meeting transcript.

2. Proposed Rule Amendment:

Proposed Rule	Counterpart Federal Rule - 30 CFR
<p>Chapter 1, Section 2(bu)</p> <p>(bu) "Public road" means <u>a road; any</u> thoroughfare open to the public which has been and is being used by the public for passage of vehicles, and is maintained by public funds.</p> <p>(i) <u>Which has been designated as a</u> <u>public road pursuant to the laws of the</u> <u>jurisdiction in which it is located;</u></p> <p>(ii) <u>Which is maintained with public</u> <u>funds in a manner similar to other public roads</u> <u>of the same classification within the</u> <u>jurisdiction;</u></p> <p>(iii) <u>For which there is substantial</u> <u>(more than incidental) public use; and</u></p> <p>(iv) <u>Which meets road construction</u> <u>standards for other public roads of the same</u> <u>classification in the local jurisdiction.</u></p>	<p>761.5 <i>Public road</i> means a road--</p> <p>(a) Which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;</p> <p>(b) Which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;</p> <p>(c) For which there is substantial (more than incidental) public use; and</p> <p>(d) Which meets road construction standards for other public roads of the same classification in the local jurisdiction.</p>

Statement of Reasons for Rule Amendment 2:

The LQD is proposing to adopt the Federal rules regarding roads. In order to do so in a complete fashion, the LQD is also proposing to adopt the Federal definition for public road as well. It is important that the LQD follow the same reasoning and interpretation regarding the classification of roads and enforcement of performance standards as the OSM. This includes the requirement that a road must meet all four criteria ((i) through (iv)) in order to be considered a "public road."

The authority to amend this rule is provided by W.S. §§ 35-11-103(e)(xx), 35-11-112(a)(i) and 35-11-406(b)(v).

3. Proposed Rule Amendment:

Proposed Rule	Counterpart Federal Rule - 30 CFR
<p>Chapter 1, Section 2(bz)</p> <p>(bz) "Road(s)" means a surface right-of-way <u>corridor of affected land associated with for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface drainage features. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas. Immediate mining area refers to areas subject to frequent surface changes. This includes areas where topsoil and overburden are being moved and areas undergoing active reclamation. Roads shall be classified to include:</u></p>	<p>701.5 <i>Road</i> means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.</p>

<p>(i) Haul roads: all roads utilized for the transport of the extracted mineral, overburden, or other earthen materials.</p> <p>(ii) Access roads: all roads, exclusive of haul and light-use roads, utilized for the transportation of personnel, equipment, and small payloads of material within the permit area.</p> <p>(iii) Light-use roads: those roads established and utilized for exploration, for occasional inspection or monitoring equipment, weather station, test plots, or for other purposes necessary to comply with the requirements of these regulations. Light-use roads shall be limited to:</p> <p>(A) Roads or portions thereof which exist for less than six months and where the road is constructed by grading, cutting, filling or other methods whereby the natural land surface is disturbed; or</p> <p>(B) Nonconstructed roads where the natural land surface is not physically altered by same course construction or grading, however a two-tracked road occurs due to vehicle travel over the same course. Nonconstructed roads may include pioneer construction roads or roads used for transport of spoil and topsoil to stockpile sites which exist for not greater than two weeks and are then stabilized or replaced in accordance with these requirements.</p> <p>(iv) Exempted roads: roads within the pit and those roads maintained by the county, State or Federal government or those roads which are existing private roads except:</p> <p>(A) When the existing road requires extensive regrading and resurfacing in order to render the road usable; or</p> <p>(B) Upgrading of the road requires cuts, fills, and borrow areas.</p>	
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Statement of Reasons for Rule Amendment 3:

The LQD is proposing to adopt the Federal definition for roads. By doing so, the LQD is satisfying the October 3, 1990 disapproval that the LQD received from the OSM regarding the exempted roads as provided in subsection (iv) of the LQD's current definition of roads. The OSM stated that all roads, regardless of whether they are public or private, which would be included in the State's definition of "surface coal mining operation" must be subject to regulation.

The Federal definition for "road(s)" also excludes the term "pioneer roads." The OSM explained on page 45193 of the November 8, 1988 Federal Register "that pioneer roads are not a separate, discrete category of roads, but are part of the process of constructing primary and ancillary roads. As such, pioneer roads are subject to the performance standards applicable to the construction process such as those in § 816.150(b)(1) through (6)."

As part of this adoption of the Federal language, the LQD is proposing to define what is meant by "immediate mining area" with the addition of the last sentence to the proposed rule. The lack of a definition for this term was brought up by coal industry personnel at the July 15, 1996 EQC hearing.

In the November 8, 1988 Federal Register Notice (53 FR 45192), the OSM explained that they interpret "immediate mining area" to mean the following: "the area where the coal is being removed from the seam and to other areas that should not be subject to the performance standards for roads because they are subject to frequent surface changes. These other areas include areas where topsoil and overburden are being moved and areas undergoing active reclamation. OSMRE intends the term "immediate mining area" to refer to such areas of frequent change." The LQD has adopted the OSM interpretation for use in this definition to make it clear by rule what is meant by "immediate mining area."

An additional change proposed to these rules is the deletion of the term "right-of-way." This term is used by the OSM in their definition of "road." However, this term is defined as a legal right of passage over **another person's ground**. In many instances in Wyoming, the mine operator owns the land within the mine permit. Therefore, by definition, the corridors on such a mine used for land transportation could technically not be called a road for regulatory purposes. The LQD wants to avoid any possible confusion that may arise from the use of the term "right-of-way" in the definition.

The authority to amend this rule is provided by W.S. §§ 35-11-103(e)(xx)(B), 35-11-112(a)(i) and 35-11-406(b)(v).

Chapter 2

4. Proposed Rule Amendment:

	Proposed/Current Rule	Federal Counterpart - 30 CFR
	Chapter 2, Section 2. Application Content Requirements for Surface Coal Mining Operations	
	Chapter 2, Section 2(b) In addition to that information required by W.S. § 35-11-406(b), each application for a surface coal mining permit shall contain:	
	(i) A complete operations plan proposed to be conducted during the life of the mine including:	780.11 Operation plan: General Requirements. Each application shall contain a description of the mining operations proposed to be constructed during the life of the mine within the proposed permit area, including, at a minimum, the following:
4.a	Chapter 2, Section 2(b)(i)(D) Cross-sections, and/or maps and plans of the area to be mined during the term of the permit, unless required for the permit area by the Administrator or as specified below, certified by a registered professional engineer or professional geologist, showing: <div style="margin-left: 40px;">(V) The location, construction and maintenance of mine facilities. The location, construction and maintenance of coal stockpiles, temporary and excess spoil piles shall be provided for the permit area;</div> <p><i>The language regarding mine facilities is no longer necessary with the inclusion of subsection (E) below.</i></p>	780.14 Operation Plan: Maps and plans. Each application shall contain maps and plans as follows: (b) The following shall be shown for the proposed permit area: <div style="margin-left: 40px;">(1) Buildings, utility corridors and facilities to be used;</div> <div style="margin-left: 40px;">(5) Each topsoil, spoil, coal waste and non-coal waste storage area;</div> (c) Except as provided in Sections 780.25(a)(2), 780.25(a)(3), 780.35(a), 816.71(b), 816.73(c), 816.74(c), and 816.81(c) of this Chapter, cross sections, maps, and plans required under Paragraphs (b)(4), (5), (6), (10), and (11) of this Section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such cross Sections, maps, and plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture.

	Proposed/Current Rule	Federal Counterpart - 30 CFR
4.b	Chapter 2, Section 2(b)(i)(E) <u>A description, plans, and drawings for each mine facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross-sections, design drawings, and specifications sufficient to demonstrate compliance with section 2(n) of Chapter 4 for each facility.</u>	780.38 Support Facilities Each applicant for a surface coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with Sec. 816.181 of this chapter for each facility.
4.c	Chapter 2, Section 2(b)(i)(F) <u>A map of the permit area which clearly shows that a railroad spur(s) which provides exclusive service to that particular permit is being included within the permit boundary from the point that it provides such service. This spur(s) shall be covered by a reclamation bond.</u>	(language presented in 4.c is a rewording of text from the current location in Chapter 4, Section 2(j)(i)(A), shown on page 21 of this document)

Statement of Reasons for Rule Amendment 4:

The sentence within Chapter 2, Section 2(b)(i)(D)(V) is proposed for repeal because as it is written it is not as detailed as the counterpart Federal rule regarding support facilities (the Federal rules use the term "support facilities" instead of mine facilities). Consequently, the LQD is proposing to adopt the Federal rule to address the permit application requirements regarding mine facilities. Adoption of this rule makes it clear that all mine facilities planned for the life of the mine, rather than simply the current term of permit, shall be included in a permit application.

In addition, the Federal rules do not require that the maps and plans for buildings, utility corridors and facilities (which equate to the LQD's definition of mine facilities) be certified by a professional engineer or professional geologist as is currently required in Chapter 2. The proposed adoption of counterpart language to 30 CFR 780.38 now makes this clear.

The rule language previously found at Chapter 4, Section 2(j)(i)(A) is being proposed for relocation into Chapter 2 for two reasons. The first being that it is no longer appropriate to discuss railroads within Section 2(j) of Chapter 4 which as proposed will apply only to roads. Secondly, this rule explains how an applicant is to treat railroads with regards to permit boundary inclusion and this is the type of permit application requirement prescribed in Chapter 2. Therefore, this existing rule is more appropriately placed in Chapter 2, Section 2(b)(i) which requires "a complete operations plan proposed to be conducted during the life of the mine including:

The authority to amend these rules is provided by W.S. §§ 35-11-103(e)(xx)(B), 35-11-112(a)(i) and 35-11-406(b)(v).

Chapter 2, continued

5. Proposed Rule Amendment/Repeal:

	Proposed Rule	Federal Counterpart, State Statutory Requirement or Statement of Reasons
	Chapter 2, Section 2. Application Content Requirements for Surface Coal Mining Operations	
5.a	Chapter 2, Section 2(b)(iv)(G) A classification and description, including maps and cross-sections, if appropriate, of all roads (except exempted roads), other transportation facilities, shipping areas and rights-of-way to be built or utilized during the operation. The classification shall designate the road as either a haul road, access road, or light-use road. The description shall include:	<i>Rule is no longer needed with the adoption of proposed subsections 2(b)(xix) and 2(b)(i)(E) for roads and mine facilities, respectively.</i>
5.b	Chapter 2, Section 2(a) In addition to that information required by W.S. § 35-11-406(a), each application for a surface coal mining permit shall contain: (i) A complete identification of interests, which shall include: Chapter 2, Section 2(b)(iv)(G)(i) (a)(i)(E) Legal ownership - if the operator includes roads or spur lines within the permit area but does not possess the mineral rights or the right-to-mine for these lands, the legal land description shall then be listed in the application as a separate subsection in Appendix "C". The heading of the subsection shall make it clear that the right-to-mine is not claimed on the described lands. Surface owners shall be listed for all lands crossed by spur lines and roads.	Required by W.S. § 35-11-406 (a) Applications for a mining permit shall be made in writing to the administrator and shall contain: (ii) A sworn statement stating that the applicant has the right and power by legal estate owned to mine from the land for which the permit is desired;

	Proposed Rule	Federal Counterpart, State Statutory Requirement or Statement of Reasons
5.c	Chapter 2, Section 2(b)(iv)(G)(H) All information necessary to show compliance with the requirements of Chapter 4, Section 2.(j).	<i>No Federal counterpart rule and no longer needed with the adoption of the other Federal counterpart language. Rule proposed for repeal.</i>
5.d	Chapter 2, Section 2(b)(iv)(H G) A plan for the disposal of buildings and structures <u>mine facilities</u> , erected, used or modified by the applicant in accordance with the requirements of Chapter 4, Section 2(m).	<i>With the proposed repeal of subparagraph 2(b)(iv)(G) to accommodate the Federal rule at 780.37(a), existing subparagraph (H) requires renumbering to (G). In addition, the reference to buildings and structures needs to be modified to make it clear that these are considered to be "mine facilities."</i>

Statement of Reasons for Rule Amendment/Repeal 5 :

The OSM specified in a letter to the LQD dated October 3, 1990 that there are several outstanding deficiencies associated with the LQD rules pertaining to roads. In this letter, the OSM indicated that "Chapter 2, Section 2.(b)(iv)(G) only requires maps and cross-sections of roads, if appropriate. This provides discretion beyond that provided in the Federal rules. To be no less effective than the Federal rules Wyoming must require maps and cross-sections for all roads." With the proposed repeal of Section 2(b)(iv)(G) (item 5.a) and proposed adoption of Section 2(b)(xix) presented below, the concern expressed by the OSM will be addressed.

The rule currently found at Section 2(b)(iv)(G)(I) is proposed for recodification (item 5.b) as Section 2(a)(i)(E) because it is more appropriate for this requirement regarding legal ownership to be under subsection (a) rather than (b). Subsection (a)(i) refers to information pertaining to the identification of interests, whereas subsection (b) requests information pertaining to the mine and reclamation plan specifically.

With the repeal of subsection 2(b)(iv)(G), the rule that follows as (H) must be renumbered as (G) to coincide with the numbering within this subsection. The term "buildings and structures" is proposed to be repealed and replaced with "mine facilities" to maintain consistent use of the term "mine facilities." This is presented as item 5.d.

The authority to amend these rules is provided by W.S. §§ 35-11-112(a)(i) and 35-11-406(a)(ii) and (iv).

Chapter 2, continued

6. Proposed Rule Amendment/Adoption/Repeal:

	Proposed Rule	Counterpart Federal Rule - 30 CFR or Statement of Reasons
6.a	<p>Section 2(b)(xix) <u>Road Systems</u>. A complete description covering the area to be mined during the term of the permit of roads and other transportation facilities, and a general location of proposed roads for the permit area. The description shall include, but not be limited to the following:</p> <p>(A) <u>Each applicant shall submit plans and drawings for each road as defined in Chapter 1 to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall:</u></p>	<p>780.37 Road Systems.</p> <p>(a) Plans and drawings. Each applicant. for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in Sec. 701.5 of this chapter, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall --</p>
6.b	<p>Chapter 2, Section 2(b)(xix)(A)(I) <u>Include a map, appropriate cross-sections, design drawings and Specifications for each road widths, road gradients, road surfaceing materials, road cuts, fill embankments, culverts, bridges, drainage ditches, and drainage structures and low-water crossings;</u></p>	<p>780.37(a)(1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;</p>
6.c	<p>Chapter 2, Section 2(b)(xix)(B) A report of appropriate geotechnical analysis to demonstrate that steep-cut slopes and embankments will meet minimum safety factors; (moved to proposed Chapter 4, Section 2(j)(vii)(B), page 31 of this document)</p>	<p><i>Federal counterpart is at 30 CFR 816.151(b). This section deals with the design of primary roads and is now presented as proposed Chapter 4, Section 2(j)(vii)(B).</i></p>

	Proposed Rule	Counterpart Federal Rule - 30 CFR or Statement of Reasons
6.d	Chapter 2, Section 2(b)(xix)(C)(A)(II) <u>Contain the drawings and specifications of each proposed road that is located in the channel of an ephemeral stream that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent or any perennial stream, as necessary for approval of the road by the Administrator in accordance with Chapter 4, Section 2(j)(iv)(A);</u>	780.37(a)(2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the regulatory authority in accordance with Sec. 816.150(d)(1) of this chapter;
6.e	Chapter 2, Section 2(b)(xix)(A)(III) <u>Contain the drawings and specifications for each proposed ford of intermittent or perennial streams that is used as a temporary route, as necessary for approval of the ford by the Administrator in accordance with Chapter 4, Section 2(j)(vii)(C)(II);</u>	780.37(a)(3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the regulatory authority in accordance with Sec. 816.151(c)(2) of this chapter;
6.f	Chapter 2, Section 2(b)(xix)(C)(A)(IV) <u>Contain a A description of measures to be taken to obtain approval of from the Administrator for alteration or relocation of a natural drainageway stream channel under Chapter 4, Section 2(j)(vii)(D)(IV);</u>	780.37(a)(4) Contain a description of measures to be taken to obtain approval of the regulatory authority for alteration or relocation of a natural stream channel under Sec. 816.151(d)(5) of this chapter;
6.g	Chapter 2, Section 2(b)(xix)(A)(V) <u>Contain the drawings and specifications for each low-water crossing of an ephemeral stream channel that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent stream channel or any perennial stream channel so that the Administrator can maximize the protection of the stream in accordance with Chapter 4, Section 2(j)(vii)(D)(VI); and</u>	780.37(a)(5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the regulatory authority can maximize the protection of the stream in accordance with Sec. 816.151(d)(6) of this chapter; and

	Proposed Rule	Counterpart Federal Rule - 30 CFR or Statement of Reasons
6.h	Chapter 2, Section 2(b)(xix)(A)(VI) <u>Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.</u>	780.37(a)(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.
6.i	Chapter 2, Section 2(b)(xix)(D) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the Administrator.	<i>No Federal counterpart. Rule proposed for repeal.</i>
6.j	Chapter 2, Section 2(b)(xix)(B) <u>The plans and drawings for each primary road (as defined in Chapter 4, Section 2(j)(i)(B)) shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of this Chapter and current, prudent engineering practices.</u> <i>The LQD has not adopted the provision for land surveyors to certify the design of primary roads because land surveyors in Wyoming are not licensed to certify road designs.</i>	780.37(b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the design of primary roads a qualified registered professional land surveyor, with experience in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.
6.k	This rule is addressed by the rule as proposed above at 6.j.	780.37(c) Standard design plans. The regulatory authority may establish engineering design standards for primary roads through the State program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in Sec. 816.151(b) of this chapter.

Statement of Reasons for Rule Amendment/Adoption/Repeal 6 :

In order to be as effective as the Federal rules regarding road plan and drawing requirements, it is necessary to adopt the Federal rules verbatim. In this way, the information required for any permit

application is clear with regards to road systems and the design specifications and reclamation plans which must be presented for each.

When the OSM adopted their roads rules at Section 780.37 (November 8, 1988, 53 FR 45194 through 45197), they did so with the following interpretations:

"OSMRE believes that the information in plans and drawings enables the regulatory authority to assess the impacts resulting from any roads that would be constructed or used as part of the surface mining operations, and determine whether the operations and reclamation plan would be effective in mitigating as much of the cumulative impacts on the environment as possible consistent with the purposes of the Act.

Final § 780.37(a)(1) requires the applicant to submit a map, and as appropriate, cross sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings and drainage structures. OSMRE expects that the amount of detail submitted by the applicant under this section will be appropriate to the classification of the road and to the extent of the projected impact from the specific feature. For example, less detail will be required for an ancillary road than for a primary road, for which the drawings and specifications would be quite detailed.

Final § 780.37(a)(2) requires drawings and specifications for each proposed road that will be located in the channel of an intermittent or perennial stream to give the regulatory authority the information necessary to approve the road, consistent with the performance standard in § 816.150(d)(1), which was promulgated pursuant to section 515(b)(18) of the Act.

Final § 780.37(a)(3) requires that the drawings and specifications for each proposed ford of perennial or intermittent streams that will be used as a temporary route provide the regulatory authority with sufficient information to review the stream ford and decide whether to approve it, consistent with the performance standard in § 816.151(c)(2).

Final § 780.37(a)(4) requires a description of measures that the applicant must take to obtain the approval of the regulatory authority for alteration or relocation of a natural stream channel, consistent with the performance standard in proposed § 816.151(d)(5).

Final § 780.37(a)(5) requires drawings and specifications for each low-water crossing of perennial or intermittent streams to enable the regulatory authority to maximize the protection of the stream in accordance with the performance standard in § 816.151(d)(6). A low-water crossing resembles a bridge in that water flows under the structure at normal stream level, but high water goes over the structure during storm or flood events.

Final § 780.37(a)(6) requires information on the applicant's plans to remove and reclaim each road, and the schedule to be followed for road reclamation, to ensure consistency with the performance standards. This information will not be required for a road that is proposed to be retained for use under an approved postmining land use."

In response to comments on this subsection in which the commenters felt that due to the variable nature of mining operations, a schedule for road removal and reclamation would be speculative at best.

The OSM responded as follows: "OSMRE recognizes the potential for changes in the road removal and reclamation schedule as mining progresses. However, this potential for change, which is inherent in all plans and schedules, does not obviate the need to have this best-plan information available to the regulatory authority during permit review to ensure consistency with the performance standards found in 30 CFR 816.150(f)."

The OSM also explained its interpretation of the rule adopted at subsection 780.37(b) on page 45195 in this same Federal Register notice by stating the following:

"This provision is identical to the proposed rules and requires that the plans and drawings for each primary road be prepared by or under the direction of a qualified professional engineer experienced in the design and construction of roads. It also requires that the engineer certify that the design meets the performance standards of 30 CFR Chapter VII, current, prudent engineering practices, **and any design criteria established by the regulatory authority.** The phrase "current, prudent engineering practices" includes those practices well-established by engineering principles and widely recognized by experts with experience in the subject."

The LQD has not proposed to adopt the counterpart language at 30 CFR 780.37(b) regarding "and any design criteria established by the regulatory authority" (Administrator). The LQD has not adopted any specific design criteria over and above that required by these proposed rules with the exception of the general proposed requirement for ephemeral streams that have the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries to be considered when contemplating low-water crossings or locating a road in such a channel. Consequently, there is no need for this counterpart Federal language at this time. If, in the future, additional design criteria are found to be necessary for Wyoming, the addition of such criteria will be done so through formal rulemaking.

The OSM received comments suggesting that the final rule allow submission of detailed design and plans at the time of road construction rather than at the time of permit application submission. OSM responded with the following:

"OSMRE believes that in order to adequately assess the impacts of the roads planned for an operation, the regulatory authority needs information required in § 780.37(b) during the initial permit review. This is particularly important for primary roads due to the potential for environmental impact associated with their frequency or length of usage. Also, OSMRE anticipates that sufficient information will be present in the permit application to ensure compliance with the appropriate performance standards. The OSMRE did not accept the suggestion that the final rule require the submission of updated plans and drawings to account for changes in the location or design of roads. If changes occur, they must be incorporated into the permit by the normal permit revision process established in 30 CFR Part 774."

The OSM also explained its interpretation of the rule adopted at subsection 780.37(c) on page 45196 in this same Federal Register notice by stating the following:

"Final § 780.37(c) is identical to the proposed rule and allows the regulatory authority to establish engineering design standards for primary roads through the State program approval process, in lieu of the engineering tests that otherwise would be performed to establish compliance with the minimum static safety factor of 1.3, for all primary road embankments. Such standards must be no less effective than the minimum static safety factor of 1.3. Suitable engineering design standards are those that are accepted in the engineering community as the basis for constructing stable roads, and are known to assure proper performance through testing and past practice. This provision enables the regulatory authority and the operator to save time and effort during the design and review of road plans, and also ensures protection of the environment through the application of standards that have proven effective for the conditions prevalent in each State."

By adopting the Federal language regarding road systems and the Federal interpretation, this alleviates the outstanding deficiencies that the OSM specified in a letter to the LQD dated October 3, 1990. One of these deficiencies explained that while Chapter 2, Section 2.(b)(iv) does require "a plan whereby the operator will reclaim the affected lands to the proposed postmining land use... including ... (G) a classification and description of all roads," it does not clearly require a plan to remove and reclaim each road, as is required under 30 CFR 780.37(a)(6). To be no less effective than the Federal regulations Wyoming must clarify that a reclamation plan must include a description of plans to remove and reclaim each road.

A second facet of this disapproval involved Chapter 2, Section 2(b)(ii) which requires a time schedule for each major step in reclamation. OSM clarified that the State does not define what a major step is. To be no less effective than 30 CFR 780.37(a)(6) Wyoming needs to either define "major step" to mean the reclamation of each road, or revise its rules to require that the reclamation plan for each road include a schedule for removal and reclamation. Adoption of the language in 30 CFR 780.37 above takes care of this deficiency.

A third facet within this disapproval was the fact that the current LQD rules do not contain separate, specific requirements for stream fords used as temporary construction routes and roads to be located in the channels of intermittent or perennial streams as is found in 30 CFR 780.37(a). This information is necessary to assess the impacts of the temporary stream fords and roads located in the channels of intermittent and perennial streams on the hydrologic balance and ensure compliance with the performance standards. Therefore, to be no less effective than the Federal regulations, Wyoming must specifically require specifications and drawings for stream fords to be used as temporary construction routes and roads to be located in the channels of intermittent and perennial streams. The proposed adoption at Chapter 2, Section 2(b)(xix)(A)(III) (item 6.e) of counterpart language from 780.37(a)(3) will eliminate this deficiency.

As stated in proposed rule amendment no. 1, the LQD is proposing that an "ephemeral stream that has the potential for sufficient flow to cause substantial environmental harm unless a downstream

sediment control structure exists within the permit boundaries" also be considered when an operator is planning to locate a road or a low-water crossing in or across such a channel. This is more effective than required by the counterpart Federal rules, but felt to be necessary to ensure environmental protection of such ephemeral channels known to occasionally carry large quantities of water.

The authority to amend, adopt or repeal these rules is provided by W.S. §§ 35-11-103(e)(xx)(B), 35-11-112(a)(i) and 35-11-406(b)(v), (xviii) and (xix).

Chapter 4

7. Proposed Rule Amendment/Adoption:

Proposed Rule	Counterpart Federal Rule - 30 CFR
Chapter 4, Sec 2.(j) Roads and other transportation facilities.	816.150 Roads:general
Chapter 4, Section (j)(i) General standards for all transportation facilities. <u>Road classification system.</u> <u>(A) Each road, as defined in Chapter 1, shall be classified as either a primary road or an ancillary road.</u> <u>(B) A primary road is any road which is:</u> <u>(I) Used for transporting mineral or spoil;</u> <u>(II) Frequently used for access or other purposes for a period in excess of six months;</u> <u>or</u> <u>(III) To be retained for an approved postmining land use.</u> <u>(C) An ancillary road is any road not classified as a primary road.</u>	816.150(a) Road classification system. (1) Each road, as defined in Sec. 701.5 of this chapter, shall be classified as either a primary road or an ancillary road. (2) A primary road is any road which is- (i) Used for transporting coal or spoil; (ii) Frequently used for access or other purposes for a period in excess of six months; or (iii) To be retained for an approved postmining land use. (3) An ancillary road is any road not classified as a primary road.

Statement of Reasons for Rule Amendment/Adoption 7:

As part of the Federal rules regarding roads and road systems, the OSM has adopted a road classification system that the LQD is also proposing to adopt. In the November 8, 1988 Federal Register notice (53 FR 45198) the OSM explained their reasoning for adopting the two-tiered classification system.

"OSMRE believes that the potential for environmental harm associated with the two types of roads is sufficiently different to require a two-tiered classification system. Roads that are heavily traveled over a long period of time; used by large heavy vehicles; or that have potential for spillage have a greater potential for environmental harm than roads that are used infrequently by small, light vehicles or for short periods of time. This concept is supported by OSMRE's experience and observations over the past ten years operating a regulatory program.

Each of the factors that distinguish primary roads from ancillary roads is related to an increased potential for environmental harm. Roads used for haulage of coal, overburden, spoil, etc. are classified as primary roads under the final rules. These roads are typically used by large, heavy vehicles. In order to accommodate such vehicles, the road must be wide, generally involving two lanes of traffic, and its surface must be capable of supporting the weight of the traffic. A wide road involves much more earthmoving in its construction and exposes more surface area, increasing the potential for erosion. On heavily traveled roads, provision must be made for vehicles to pass one another safely. The design manuals recommend wider lanes where the ability of vehicles to pass one another is a concern. See Kaufman and Ault; pp. 30-33. On less traveled roads, a single lane would suffice. The increased potential for environmental harm associated with frequently traveled roads derives from the greater surface area exposed and the greater dust entrainment associated with the larger vehicles and the greater volume of traffic. Roads with a higher weight bearing capacity require a thicker subbase, so that material must be excavated, placed and compacted in constructing the road.

Under the classification system, primary roads also include roads frequently used for a period in excess of six months. This factor is included due to the increased risk of environmental harm associated with heavy traffic over long periods of time. Duration of road use is also an important predictor of potential environmental harm. The longer a road exists, the greater potential for slips or grade failures as well as other impacts previously mentioned. In OSMRE's experience, the potential for erosion and siltation as well as road grade failures is quite seasonal, normally occurring in early spring. Especially in the Eastern U.S., the increased precipitation associated with this period combined with frequent freezing and thawing tends to degrade road beds as well as the surface. Moreover, roads used less than six months will frequently not even be in place during this season. Therefore, OSMRE believes, due to the increased risk of environmental harm, that longer term roads must be subject to the more stringent primary road design and performance standards.

Ancillary roads are all roads not designated as primary. Ancillary roads are subject to relatively infrequent use by smaller, lighter weight vehicles. Consequently, the potential severity and risk of harm from use by such vehicles is smaller. OSMRE had not identified specific types of roads in the rule as ancillary because it would not be possible to make an all-inclusive list. Examples of ancillary roads are those which provide access to air shafts, sediment ponds, and locations for hydrologic sampling, monitoring, or other similar uses."

OSMRE received comments that expressed concern that the proposed two-tiered system was overly simplistic, especially with respect to limited use roads that exist for extended periods of time. The commenters felt that such roads would be inappropriately considered primary roads.

"OSMRE does not agree that the two-tiered system is overly simplistic, nor does it agree that a "simple" system is necessarily inferior to a "complex" one. The final rule balances environmental protection, safety and road stability against design, construction and maintenance costs while providing the flexibility to address a multitude of varying site conditions. Under the final rule, infrequently used access roads that will be in existence for an extended period of time will be considered ancillary roads."

A commenter suggested that the word "frequently" be dropped because some infrequently used road could cause more environmental harm than coal haulroads. It was also suggested that frequency be defined.

"OSMRE did not drop the frequency element from the definition of primary road because it believes that frequency of use is a key predictor, along with duration of use, of potential environmental harm. OSMRE did not add a definition of "frequently used" to the final rule because it is not possible or advisable in a national rule to devise a definition that will fairly address all sets of circumstances. Whether a road is "frequently used" is a determination that should be made at ground level on a case-by-case basis taking into account the probable environmental consequences of the anticipated level of use and the types of vehicles expected to use the road. As an example, OSMRE considers that a road used only once or twice each day, or once or twice each shift, for access to a structure housing a fan or a ventilator (fan house) for the purpose of monitoring and/or maintenance would not be a "frequently used" road.

Concerning the duration of use criterion in § 816.50(a)(2)(ii), it was suggested that the six-month period should be deleted and that the primary road definition should better reflect the type of vehicular use and primary purpose of the road..... Duration of use is a key predictor of a road's potential for environmental harm. It is generally recognized that the longer a road is used, the greater the potential for stability problems and erosion. However, an infrequently used road of more than six months duration (which is not used to haul coal or spoil and which will not be retained for postmining land use) is unlikely to cause significant environmental harm and, thus is not classified as a primary road."

Three commenters suggested that OSMRE revise the road classification system in § 816.150(a)(2)(iii) as it relates to roads that will be retained for an approved postmining land use. The commenters argued that retaining a road for an approved postmining land use should not be a determining factor in classifying the road because to do so would subject the road to performance standards that could be unrelated to the use of the road during the mining operation. They felt that the classification should be determined solely by the purpose and frequency of use of the road during mining. The same commenters were also concerned about how changes in the status of a road would be handled, e.g. a road classified as ancillary during the mining operation becomes a primary road when the operator retains the road after mining and reclamation is completed.

"OSMRE did not accept the commenters' arguments and continues to believe that roads which are to be retained for an approved postmining land use should be considered primary roads and be subject to associated performance standards. OSMRE bases this belief on the fact that after final bond release, protection from the future environmental consequences of road use and maintenance under the Act ceases. The operator has no responsibility for subsequent adverse environmental impacts related to the roads's use and maintenance. In order to provide a reasonable assurance of environmental protection after the site has been reclaimed, and in the absence of an operator, OSMRE believes that postmining roads must be designed and constructed in compliance with the more stringent primary road standards. This will ensure, as far as possible, that the location, design, construction and maintenance of the road during mining operations will have minimum adverse impacts after reclamation. Concerning changes in the classification of a road, OSMRE believes that the regulatory authority must approve such changes based on the roads's compliance with all standards applicable to the road."

In addition, as required, an existing road being proposed for retention postmine shall be classified as a primary road. Consequently, an operator must submit a typical cross-section for the road, show its location on a map and certify (P.E. certification) that the road is designed for the traffic anticipated to be using the road after bond release (i.e., designed for the postmining land use). The operator may be required to reconstruct the road as necessary to accommodate the postmining land use. Examples of when this may or may not need to occur are as follows:

- a. If the road is a haul road with an 80 foot width, but it's only going to be carrying ranch traffic after mining, the road will require modification. This would include ripping up the road surface to leave only the width that is needed and keeping the road bed intact but requiring that it be revegetated in accordance with the other affected areas on the mine. As long as the side slopes along the roadside are stable, the operator would not be required to do dirt work to remove the remaining roadbed and adjacent slopes. Under this scenario, the culverts constructed to service the original 80 foot road would not need to be removed and reclaimed. A Professional Engineer would have to certify this final roadbed prior to the LQD approving it for retention for the postmining land use.
- b. In the case of an ancillary road that the mine operator wants to leave, similar information would be required. The operator would need to submit a typical cross-section for the road, show its location on a map and certify (P.E. certification) that the road is designed for the traffic anticipated to be using the road after bond release (i.e., designed for the postmining land use). If the amount of anticipated postmine use is such that an ancillary road will be adequate, the operator doesn't need to do any additional work to the road (assuming of course that it is currently meeting all of the required performance standards).

One commenter indicated that the term "ancillary road" is poorly defined. The commenter was concerned because of the lack of any permitting or reclamation requirements for ancillary roads.

"OSMRE disagrees that "ancillary road" is poorly defined. Taken together, the definition of *road* at § 701.5 and the definition of primary roads at § 816.150(a)(2) delineates ancillary road with a degree of specificity appropriate to a national rule given the variety of roads associated with mining operations. The permit information and reclamation requirements specifically associated with ancillary roads are found in §§ 780.37 and 816.150, respectively."

In proposing to amend the counterpart Federal rules into the Wyoming program, the LQD is also proposing to **adopt the same interpretations** as outlined by the OSM in the Federal Register. In doing so, this will answer questions that were brought up by industry representatives at the July 15, 1996 EQC hearing. These representatives expressed concern over the numerous private roads that run through a given permit area over which an operator has no control. Examples of such roads are ranch roads and oil and gas production access roads. With the adoption of the OSM's classification system, an operator would be responsible for the environmental performance standards associated with the private roads if they are using all or a portion of such existing private road to facilitate mining activities. Whether the design, operating and environmental performance standards associated with the road fall into the primary or ancillary category will depend on the type of mining related use of the road and the duration and frequency of use. If a mine operator is not using any part of the existing private road, the road and the environmental impacts from the road are not the operator's responsibility and these roads are not considered as being part of the permitted operation.

The LQD is proposing one wording change from that presented in the counterpart Federal rule. This is the use of the term "mineral" in place of "coal" in subsection 2(j)(i)(B)(I). Coal mines in Wyoming often mine scoria as well as coal from within the coal mine permit area. Therefore, the roads used to transport the scoria and provide access to the unmined scoria are also intended to be regulated by these proposed rules. By modifying the definition for primary roads in this way, there will be no problem with future interpretation of which roads are regulated as part of a coal mining operation.

The authority to amend this rule is provided by W.S. §§ 35-11-103(e)(xx)(B), 35-11-112(a)(i) and 35-11-406(b)(v).

Chapter 4, continued

8. Proposed Rule Repeal:

Proposed Rule Repeal	Counterpart Federal Rule - 30 CFR
Chapter 4, Section 2(j) Roads and other transportation facilities:	816.150 Roads:general

Proposed Rule Repeal	Counterpart Federal Rule - 30 CFR
Chapter 4, Section 2(j)(i)(A) Roads and railroads. Constructed or upgraded roads and railroad spurs shall be included within the permit area from that point that they provide exclusive service and shall be covered by a reclamation bond. (The latter portion of this sentence beginning with "and railroad spurs" has been relocated to Chapter 2, Section 2(b)(i)(F) shown on page 8 of this document.)	No Federal counterpart

Statement of Reasons for Rule Repeal 8 :

This rule is proposed for repeal because it was cited by the OSM (51 FR 42213) on November 24, 1986 as being less effective than the Federal regulations. The Federal definition for "surface coal mining activities" includes all lands affected by the construction of new roads *or use* of existing roads to gain access to the site, not just those that are constructed or upgraded. In addition, the Federal rules do not limit the inclusion of a road or railroad as being a part of a permit area only if it provides exclusive service to a particular operator.

This current language is no longer necessary in the rules with the proposed adoption of the Federal definition for roads which makes it clear that any "surface corridor of affected land associated with travel by a land vehicle used....." is considered a road. There is no distinction as to whether the road has been constructed or upgraded. If it's being used, it's considered to be part of a "surface coal mining operation."

The authority to repeal this rule is provided by W.S. §§ 35-11-103(e)(xx)(B) and 35-11-112(a)(i).

Chapter 4, continued

9. Proposed Rule Amendment/Adoption:

	Proposed Rule	Counterpart Federal Rule - 30 CFR
	Chapter 4, Section 2(j) Roads and other transportation facilities:	816.150 Roads:general

	Proposed Rule	Counterpart Federal Rule - 30 CFR
9.a	Chapter 4, Section 2(j)(ii) General performance standards for haul roads, access roads or light-use roads. standards. <u>Each road shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:</u>	816.150(b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:
9.b	Chapter 4, Section 2(j)(ii)(A) <u>Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;</u>	816.150(b)(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;
9.c	Chapter 4, Section 2(j)(ii)(C) To the extent possible using the best technology currently available, roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the affected land or permit area. Any such contribution shall not be in excess of limitations of State or Federal law or degrade the quality of receiving water.	See 9.d, e and f below
9.d	Chapter 4, Section 2(j)(ii)(B) <u>Control or prevent damage to fish, wildlife, or their habitat and related environmental values;</u>	816.150(b)(2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;
9.e	Chapter 4, Section 2(j)(ii)(C) <u>Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;</u>	816.150(b)(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;
9.f	Chapter 4, Section 2(j)(ii)(D) <u>Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;</u>	816.150(b)(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

	Proposed Rule	Counterpart Federal Rule - 30 CFR
9.g	Chapter 4, Section 2(j)(ii)(D)(E) The normal flow of water in streambeds and drainage channels shall not be <u>significantly seriously</u> altered: Damage to public or private property shall be prevented or controlled. ;	816.150(b)(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;
9.h	Chapter 4, Section 2(j)(ii)(F) <u>Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands listed in Chapter 12, Section 1(a)(v)(A); and</u>	816.150(b)(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress;
9.i	Chapter 4, Section 2(j)(ii)(D)(G) <u>Use nonacid- or and nontoxic-forming substances shall not be used in road surfacing.</u>	816.150(b)(7) Use nonacid- and nontoxic-forming substances in road surfacing.

Statement of Reasons for Rule Amendment/Adoption 9:

In order to be as effective as the Federal rules, the LQD is proposing to adopt verbatim the Federal counterpart rules regarding performance standards for all roads. By adopting the Federal language at 30 CFR 816.150(b)(2) regarding the control of road dust, the LQD will be able to address a specific disapproval of the Wyoming program. In a letter dated October 3, 1990, the OSM notified Wyoming that to be no less effective than the revised Federal rules, Wyoming must amend its rules to clarify that road dust created by vehicular traffic and dust occurring on other exposed surfaces must be classified and regulated as air pollution attendant to erosion. They also went on to say that Section 2(j)(i) which is applicable to all roads, lacks the requirement that road dust created by vehicular traffic and dust occurring on other exposed surfaces be classified and regulated as air pollution attendant to erosion. To be no less effective than the Federal regulations at 30 CFR 816/817.150(b) Wyoming needs to add such a requirement.

In the November 8, 1988 Federal Register notice (page 45201), the OSM discussed their interpretation of their newly adopted road related rules. The OSM explained that:

"OSMRE believes that § 816.150 does provide sufficient national standards for the design, construction, maintenance, and reclamation of roads, while allowing the consideration of the variations in site-specific conditions that can be encountered at different operations

throughout coal fields. These standards necessarily allow the regulatory authority the flexibility to identify the measures that are appropriate for the site-specific characteristics of each surface coal mining operation."

One commenter to these new rules was concerned that § 816.150(b) would require the reconstruction of existing permitted roads causing extensive environmental damage. The commenter suggested that the regulatory authority should be able to waive certain performance standards, e.g. drainage control, cut and fill slopes, and lane widths, as long as erosion and stream sedimentation are controlled. The OSM responded with the following:

"OSMRE did not include such a waiver provision in the final rule. In accordance with 30 CFR 701.11(e), existing structures, including roads, that meet the performance standards may be exempted from meeting the design requirements. To the extent that changes may be required by a regulatory authority to bring existing permitted roads into compliance with this rule, no significant reconstruction and expense or increased environmental harm is expected. Existing permitted roads should already be in compliance with the performance standards of a State or Federal regulatory program."

The LQD will interpret proposed Chapter 4, Section (2)(j)(ii) the same way. If a permitted road is causing environmental harm, regardless of whether it is a primary or ancillary road, the LQD will require that the road be repaired to eliminate the cause of the environmental harm. If an already permitted road does not meet the current design standards being proposed, this road will not require reconstruction to meet the design standards as long as it is meeting all the proposed performance standards.

Another commenter was concerned that § 816.150(b)(5) would prohibit placement of any roads anywhere it would alter flow in a streambed or drainage channel. The commenter asserted that the terms "streambed or drainage channel" could be construed so as to include even the smallest ephemeral flow. The commenter suggested a language change that would replace "streambed or drainage channel" with "intermittent or perennial stream." The OSM responded to this comment in the following way:

"OSMRE did not accept this suggested language change since it is not consistent with section 515(b)(18) of the Act which uses the phrase "streambed or drainage channel." Further, OSMRE does not agree that § 816.150(b)(5) would necessarily prohibit placement of any road where it would alter flow in streambeds or drainage channels because the language in this section states that the road shall refrain from "seriously" altering the normal flow. OSMRE does not regard this language as a strict prohibition on the placement of roads that would cause minor alterations in normal flow."

The LQD will not be limiting their scrutiny of the potential for seriously altering the normal flow in a streambed or drainage channel to perennial or intermittent streams. Ephemeral channels in Wyoming's arid environment can, in some cases, be known to carry large amounts of water. Such

channels and the anticipated timing, level and duration of flow events will also need to be considered when contemplating the construction of a road.

The authority to amend these rules is provided by W.S. §§ 35-11-112(a)(i), 35-11-402(a)(vi), 35-11-406(b)(xiii) and (xviii).

Chapter 4, continued

10. Proposed Rule Repeal/Adoption:

Proposed Rule	Counterpart Federal Rule - 30 CFR
<p>Chapter 4, Section 2(j)(ii)(F) The design and construction or reconstruction shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, and such other design criteria required by the Administrator to ensure environmental protection and safety appropriate for the planned duration and use.</p> <p>Chapter 4, Section 2(j)(iii) <u>Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices.</u></p>	<p>816.150(c) Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.</p>

Statement of Reasons for Rule Repeal/Adoption 10:

As part of adopting the Federal classification system for roads, it is also necessary to adopt the same design and construction criteria as used by the OSM.

However, as explained on page 15 of this document, the LQD has not proposed to adopt the Federal counterpart phrase at 816.150(c), "and any necessary design criteria established by the regulatory authority."

The authority to amend these rules is provided by W.S. §§ 35-11-103(e)(xx)(B); 35-11-112(a)(i); 35-11-402(a)(vi) and 35-11-406(b)(xiii), (xiv) and (xviii).

Chapter 4, continued

11. Proposed Rule Repeal/Adoption:

Proposed Rule	Counterpart Federal Rule - 30 CFR
Chapter 4, Section 2(j)(iv) <u>Location.</u>	816.150(d) Location.
<p>Chapter 4, Section 2(j)(i)(B) Roads shall not be constructed up a stream channel or so close that the material shall spill into the channel, unless specifically approved by the Administrator.</p> <p>Chapter 4, Section 2(j)(i)(C) Streams shall be crossed at or near right angles unless contouring down to the streambed will result in less potential stream bank erosion. Structure of ford entrances and exits must be constructed to prevent water from flowing down the roadway.</p> <p>Chapter 4, Section 2(j)(iv)(A) <u>No part of any road shall be located in the channel of an ephemeral stream that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent stream channel or any perennial stream channel unless specifically approved by the Administrator in accordance with subsections 2(c), 2(e), 2(f), 2(h), 2(i), 2(r)(ii) and 2(w) of this Chapter and Section 2(a)(i) of Chapter 19.</u></p>	<p>816.150(d)(1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority in accordance with applicable Sections 816.41 through 816.43 and 816.57 of this chapter.</p>

Proposed Rule	Counterpart Federal Rule - 30 CFR
<p>Chapter 4, Section 2(j)(iv)(B) <u>Roads shall be located to minimize downstream sedimentation and flooding.</u></p> <p>Chapter 4, Section 2(j)(i)(D) Drainage control structures shall be used as necessary to control runoff and to minimize erosion, sedimentation and flooding. Drainage facilities shall be installed as road construction progresses.</p> <p>Chapter 4, Section 2(j)(i)(E) Culverts shall be installed at prominent drainageways, or as required by the Administrator. Where necessary, culverts must be protected from erosion by adequate rock, concrete or riprap. Culverts and drainage pipes shall be constructed to avoid plugging, collapsing, or erosion at inlets and outlets. (Both of these rules proposed for repeal are now addressed in proposed Chapter 4, Section 2(j)(iii))</p> <p>Chapter 4, Section 2(j)(i)(F) Trees and vegetation may be cleared only for the essential width necessary to maintain slope stability and to serve traffic needs.</p>	<p>816.150(d)(2) Roads shall be located to minimize downstream sedimentation and flooding.</p> <p>No Federal Counterpart</p>

Statement of Reasons for Rule Repeal/Adoption 11:

In the October 3, 1990 disapproval letter, the OSM also indicated that the Federal rules (at 30 CFR 816.150(d)) prohibit the placement of any part of a road in the channel of an intermittent or perennial stream unless the regulatory authority specifically approves such an action in accordance with the applicable provisions of 30 CFR 816.41 through 816.43 and 816.57. Wyoming has a similar requirement but does not reference the State hydrologic requirements corresponding to 30 CFR 816.41-816.43 and 816.57. The State will need to revise its program to include this cross-reference to be no less effective than the Federal provisions.

The State equivalent sections to 816.41-816.43 and 816.57 are:

816.41 Hydrologic-balance protection

Chapter 4, Section 2(w) [Minimizing disturbance to the hydrologic balance]
Chapter 4, Section 2(i) [Surface and groundwater monitoring];
Chapter 4, Section 2(h) [Protection of Groundwater Recharge Capacity];
Chapter 4, Section 2(c) [Acid and toxic-forming material]
Chapter 19, Section 2(a)(i) [Probable cumulative hydrologic impacts]

816.42 Hydrologic Balance: Water quality standards and effluent limitations

Chapter 4, Section 2(e)(ii) [Control of discharge or drainage]

Chapter 4, Section 2(f) [Sedimentation ponds]

816.43 Diversions

Chapter 4, Section 2(e) [Diversion systems and drainage control]

816.57 Hydrologic balance: Stream buffer zones

Chapter 4, Section 2(r)(ii) [Stream buffer zone];

By adopting the proposed rule change at Chapter 4, Section 2(j)(iv)(A), the state will be able to satisfy this disapproval.

The authority to amend these rules is provided by W.S. §§ 35-11-112(a)(i), 35-11-402(a)(vi) and 35-11-406(b)(xviii).

Chapter 4, continued

12. Proposed Rule Repeal/Adoption:

	Proposed Rule	Counterpart Federal Rule - 30 CFR
	Chapter 4, Section 2(j)(v) <u>Maintenance.</u>	816.150(e) Maintenance.
12.a	Chapter 4, Section 2(j)(i)(G) Access, haul roads and drainage structures shall be routinely maintained. Chapter 4, Section 2(j)(v)(A) <u>A road shall be maintained to meet the performance standards of this Chapter.</u>	816.150(e)(1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority.

	Proposed Rule	Counterpart Federal Rule - 30 CFR
12.b	<p>Chapter 4, Section 2(j)(ii)(G) All roads shall be maintained and/or repaired, if damaged, to meet the performance standards of this subsection.</p> <p>Chapter 4, Section 2(j)(v)(B) <u>A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.</u></p>	<p>816.150(e)(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.</p>

Statement of Reasons for Rule Repeal/Adoption 12:

In order to be consistent with the Federal rules regarding road maintenance, the LQD is proposing to amend the current Chapter 4 rules to coincide with the Federal counterpart rules.

However, as explained in the last paragraph of page 15 of this document, the LQD has not proposed to adopt the Federal counterpart phrase at 816.150(e)(1), "and any necessary design criteria established by the regulatory authority."

The authority to repeal/adopt these rules is provided by W.S. §§ 35-11-112(a)(i) and 35-11-406(b).

13. Proposed Rule Repeal/Adoption:

	Proposed Rule	Counterpart Federal Rule - 30 CFR
13.a	<p>Chapter 4, Section 2(j)(ii)(H) All roads shall be closed to vehicular travel when no longer needed and reclaimed in accordance with this Chapter, unless the road is retained for use under an approved postmining land use.</p> <p>Chapter 4, Section 2(j)(vi) <u>Reclamation. A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:</u></p>	<p>816.150(f) Reclamation. A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:</p>
13.b	Chapter 4, Section 2(j)(vi)(A) <u>Closing the road to traffic;</u>	816.150(f)(1) Closing the road to traffic;
13.c	Chapter 4, Sec. 2(j)(vi)(B) <u>Removing all bridges unless approved as part of the postmining land use and removing all culverts unless approved as part of the postmining land use or approved for burial in place;</u>	816.150(f)(2) Removing all bridges and culverts unless approved as part of the postmining land use;
13.d	Chapter 4, Section 2(j)(vi)(C) <u>Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;</u>	816.150(f)(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;
13.e	Chapter 4, Section 2(j)(vi)(D) <u>Reshaping cut-and-fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;</u>	816.150(f)(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

	Proposed Rule	Counterpart Federal Rule - 30 CFR
13.f	Chapter 4, Section 2(j)(vi)(E) <u>Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and</u>	816.150(f)(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and
13.g	Chapter 4, Section 2(j)(vi)(F) <u>Scarifying or ripping the roadbed, replacing topsoil, subsoil or substitute material and revegetating disturbed surfaces in accordance with subsections 2(c)(i) through 2(c)(x) and 2(d) of this Chapter.</u>	816.150(f)(6) Scarifying or ripping the roadbed; replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with Sections 816.22 and 816.111 through 816.116 of this chapter.

Statement of Reasons for Rule Repeal/Adoption 13:

In the October 3, 1990 deficiency letter from the OSM to Wyoming, the OSM indicated that the State must adopt the Federal minimum standards for road reclamation. Consequently, the LQD is proposing to adopt the counterpart Federal rules into Chapter 4.

The proposed adoption at Chapter 4, Section 2(j)(vi)(B) and itemized as entry 13.c provides an alternative to operators regarding culverts in roadways that are being reclaimed. Rather than having to remove a culvert if it is not an approved part of the postmining land use, the operator can approach the Administrator about leaving the culvert buried in place for perpetuity. If an operator chooses this alternative, the operator will be required to provide a plan which will guarantee that there will not be any subsidence associated with the culvert in the future and that the culvert will be buried at a sufficient depth to prevent erosion (wash out) of the culvert.

The proposed adoption at Chapter 4, Section 2(j)(vi)(F) also mentions subsoil because the LQD rules contain specific provisions regarding subsoil handling, which are not mentioned in the Federal counterpart rule.

The authority to repeal and adopt these rules is provided by W.S. §§ 35-11-112(a)(i), 35-11-402(a)(ii), (iii), (v) and 35-11-406(b)(ii), (iii), (xv) and (xix) and 35-11-415(b)(iii).

Proposed Rule Amendment 14 is on the next page.

14. Proposed Rule Amendments:

	Proposed Rule	Counterpart Federal Rule - 30 CFR
14.a	Chapter 4, Section 2(j)(iii)(vii) Performance standards for haul roads and access roads. <u>Primary roads.</u>	816.151 Primary Roads
14.b	Chapter 4, Section 2(j)(iii)(vii)(A) Certification. Design and construction: The design and construction or reconstruction of haul roads and access <u>primary roads</u> shall be certified <u>in a report to the Administrator</u> by a registered professional engineer. <u>The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan. The report shall be available for review at the mine site within 30 days following the completion of construction of each primary road. as meeting the requirements of this subsection;</u> current, prudent engineering practices; and any design criteria required by the Administrator.	Primary roads shall meet the requirements of section 816.150 and the additional requirements of this section. (a) Certification. The construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified registered professional land surveyor with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.
14.c	Chapter 4, Section 2(j)(ii)(E) (vii)(B) All <u>Each primary road</u> embankments shall have, at a minimum, a static safety factors of 1.3 or meet the requirements established under Chapter 2, Section 2(b)(xix)(B).	816.151(b) Safety Factor. Each primary road embankment shall have a minimum static factor of 1.3 or meet the requirements established under Sec. 780.37(c) of this chapter.
14.d	Chapter 4, Section 2(j)(vii)(C) <u>Location.</u>	816.151(c) Location.

	Proposed Rule	Counterpart Federal Rule - 30 CFR
14.f	Chapter 4, Section 2(j)(ii)(A)(vii)(C)(I) Roads shall be located on ridges or on the most stable available slopes to minimize erosion; sedimentation and flooding. All exposed surfaces shall be stabilized in accordance with current, prudent engineering practices. To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.	816.151(c)(1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface
14.g	Chapter 4, Section 2(j)(iii)(B) (vii)(C)(II) Stream f Fords of intermittent or perennial streams by primary roads are prohibited unless they are specifically approved by the Administrator as temporary routes during periods of <u>road</u> construction.	816.151(c)(2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of road construction.
14.h	Chapter 4, Section 2(j)(iii)(C)(f) (vii)(D) <u>Drainage control. In accordance with the approved plan:</u>	816.151(d) Drainage control. In accordance with the approved plan
14.i	Chapter 4, Section 2(j)(iii)(C)(f) (vii)(D)(I) Haul and access <u>Each primary roads shall be designed, constructed, or reconstructed and maintained with to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. capable of</u> <u>The drainage control system shall be designed to safely passing the peak runoff from a 10-year, 6-hour precipitation event, or greater event a storm duration having a greater peak flow unless otherwise as specified specifically approved by the Administrator; The drainage control system shall include, but not be limited to bridges, culverts, ditches, cross drains, and ditch-relief drains.</u>	816.151(d)(1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the regulatory authority;

	Proposed Rule	Counterpart Federal Rule - 30 CFR
14.j	Chapter 4, Section 2(j)(iii)(C)(H) (vii)(D)(II) All d Drainage pipes or <u>and</u> culverts shall be <u>installed as designed, constructed and maintained in a free and operating condition and to prevent or control to avoid plugging, collapse and erosion at inlets and outlets;</u>	816.151(d)(2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;
14.k	Chapter 4, Section 2(j)(iii)(C)(V) (vii)(D)(III) Drainage ditches shall be <u>designed constructed and maintained</u> to prevent uncontrolled drainage over the road surface and embankment; Trash racks and debris basins shall be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.	816.151(d)(3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;
14.l	Chapter 4, Section 2(j)(iii)(C)(HH) (vii)(D)(IV) All e Culverts shall be <u>designed, constructed installed,</u> and maintained to sustain the vertical soil pressure, passive resistance of the foundation, and the weight of vehicles to be using the road;	816.151(d)(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;
14.m	Chapter 4, Section 2(j)(iii)(C)(IV) (vii)(D)(V) Ephemeral (shown on a USGS 7.5 minute series quad), Intermittent, or perennial <u>Natural</u> streams channels shall not be altered or relocated for road construction or reconstruction without the prior approval from of the Administrator in accordance with applicable Sections 2(c), 2(e), 2(f), 2(h), 2(i), 2(r)(ii) and 2(w) of this Chapter and Section 2(a)(i) of Chapter 19; and then, only if the natural channel drainage is not blocked except during periods of low flow or when flow has been acceptably diverted around the site, there is no significant damage to hydrologic balance, and there is no adverse impact on adjoining landowners.	816.151(d)(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with applicable Sec. 816.41 through 816.43 and 816.57 of this chapter; and

	Proposed Rule	Counterpart Federal Rule - 30 CFR
14.n	Chapter 4, Section 2(j)(iii)(C)(VI) (vii)(D)(VI) Except as provided in (B) above (vii)(C)(II) of this section, drainage structures which are used for stream channel crossings of ephemeral streams that have the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, <u>any intermittent stream or any perennial stream shall be made using bridges, culverts, low-water crossings or other structures designed, constructed, and maintained using current, prudent engineering practices. The Administrator shall ensure that low-water crossings are designed, constructed and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.</u>	816.151(d)(6) Except as provided in paragraph (c)(2) of this section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The regulatory authority shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to steamflow.
14.o	Chapter 4, Section 2(j)(iii)(D) (vii)(E) Surfacing: Primary R oads shall be surfaced with rock, crushed gravel, asphalt, or other <u>material approved by the Administrator as being sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used on the road.</u>	816.151(e) Surfacing. Primary roads shall be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.
14.p	Chapter 4, Section 2(j)(iii)(E) Maintenance: Routine maintenance shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It shall also include revegetation, brush removal, and minor reconstruction of road segments as necessary.	No Federal counterpart

Statement of Reasons for Rule Amendment 14:

As part of the road classification system used by the OSM, they have adopted specific standards applicable only to primary roads. The LQD rules do not currently contain each of the same requirements and when an equivalent requirement does exist it is not always specifically limited to primary roads. Therefore to be consistent, the LQD is proposing to adopt the counterpart Federal language.

The LQD has proposed to add a clarifying sentence to subsection 2(j)(vii)(A) (item 14.b) that is not found in the counterpart Federal rules at 816.151(a) (page 31). This sentence which reads; "The report shall be available for review at the mine site within 30 days following the completion of construction of each primary road." is being proposed to provide the operators and LQD staff with a specific time frame and procedure for making the certified report regarding the construction or reconstruction of primary roads available to the LQD inspection staff. Although the counterpart Federal rule does not contain the same language, the OSM did indicate in the November 8, 1988 Federal Register Notice that the regulatory authority should be able to review the certified report before beginning an inspection trip.

The OSM felt it was important that the certified report be submitted to the regulatory authority for housing within the regulatory authority office, whereas the LQD has taken the approach that it is acceptable to have the certified reports available at the mine site. The mines in Wyoming are large and contain numerous primary roads which can be many miles in length. Consequently, it would be cumbersome to maintain certified reports on each of these roads in the office. In addition, it has been the experience of the LQD staff that viewing the reports at the mine site prior to an inspection has been satisfactory for adequately monitoring whether any corrective action is needed.

Additionally, the OSM brought to the LQD's attention that these Federal rules at 816.151(d)(1) require that each primary road be constructed (or reconstructed) and maintained to provide adequate control of surface water drainage. This drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour or greater precipitation event. Wyoming's corresponding rule appears to allow a waiver or reduction of the 10-year, 6-hour design event standard. To be no less effective than the Federal rules, Wyoming must amend its rules to clarify that the 10-year, 6-hour event is the minimum allowable design standard. Therefore, adoption of the language in 816.151(d)(1) into Chapter 4, Section 2(j)(vii)(D)(I) (item 14.i) will satisfy this disapproval.

The authority to amend these rules is provided by W.S. §§ 35-11-112(a)(i); 35-11-402(a)(vi) and 35-11-406(b)(xiv).

Proposed Rule Amendment 15 is on the next page.

15. Proposed Rule Amendment:

	Proposed Rule	Counterpart Federal Rule - 30 CFR
15.a	<p>Chapter 4, Section 2(j)(i)(H) <u>(viii)</u> Exemptions concerning roads.</p> <p>(H) (A) If approval is obtained from the surface landowner to leave a road unreclaimed, an operator may request in writing to the Land Quality Division that a road be permitted to remain unreclaimed. The operator must furnish proof of the surface landowner's approval. Final decision of road reclamation will be made by the Land Quality Division Administrator.</p>	<p>816.133 Postmining Land Use</p> <p>(c) Criteria for alternate postmining land uses. Higher or better uses may be approved by the R.A. as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands.....</p>
15.b	<p>Chapter 4, Section 2(j)(i)(H)(H) <u>(viii)</u></p> <p>(B) In the event that the surface landowner, a city or town, another agency of the State of Wyoming or an agency of the United States government has requested that a road not be reclaimed, no bond shall be required of the applicant for the reclamation of the road and reclamation of the road shall not be required; provided, however, that the Administrator receives a copy of the written request from the surface owner, city or town, or agency of the State or Federal Government, for retention of the road.</p>	<p>800.13 Period of Liability</p> <p>(d)(2) Implementation of an alternative postmining land use approved under 816.133(c) which is beyond the control of the permittee, need not be covered by the bond.</p>

Statement of Reasons for Rule Amendment 15:

These rules are not proposed for amendment. However, the numbering associated with these rules needs to be revised to accommodate the renumbering of the rules that precede these rules.

The authority to amend these rules is provided by W.S. §§ 35-11-112(a)(i).

Chapter 4, continued; Mine Facilities

16. Proposed Rule Amendment/Repeal:

Proposed Rule	Counterpart Federal Rule - 30 CFR
Chapter 4, Section 2(m) Disposal of buildings and structures <u>mine facilities</u> .	
<p>(i) All buildings and structures <u>mine facilities</u> constructed, used or improved by the operator must be removed or dismantled <u>and shall be reclaimed in accordance with the requirements of this Chapter</u> when no longer needed for the operation unless it can be demonstrated to the Administrator's satisfaction that the buildings or structures will be of beneficial use in accomplishing the proposed use of the land after reclamation or for environmental monitoring.</p> <p>Chapter 4, Section 2 (j)(iv)(B) Railroads and other transportation and mine facility areas shall be reclaimed when no longer needed for the operation in accordance with the requirements of this Chapter.</p> <p>(ii) If the operator does not wish to remove certain buildings or <u>mine</u> facilities, he the <u>operator</u> must obtain the written consent of the surface landowner to leave the buildings or <u>mine</u> facilities intact. The operator must make a request in writing, providing written proof of the above to the Land Quality Division, that the buildings or <u>mine</u> facilities be permitted to remain intact.</p>	<p>816.100 Contemporaneous reclamation. Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under Section 785.18 of this Chapter.</p>

Statement of Reasons for Amendment/Repeal 16:

This rule is proposed for amendment to consolidate current LQD rules dealing with the removal and reclamation of mine facilities.

The authority to amend/repeal these rules is provided by W.S. §§ 35-11-112(a)(i) and 35-11-406(b)(iv).

Chapter 4, continued; Mine Facilities

17. Proposed Rule Amendment/Repeal:

	Proposed Rule	Counterpart Federal Rule - 30 CFR
17.a	<p>Chapter 4, Section 2(n) <u>Mine Facilities.</u> All support buildings, including loading and storage facilities, plants, sheds, shops and other buildings shall be designed, constructed or reconstructed and located to prevent or control erosion, pollution, and damage to public or private property, fish, wildlife, and related environmental values.</p> <p>Chapter 4, Section 2(n)(i) <u>Mine facilities shall be operated in accordance with the permit issued for the mine or coal preparation operation to which it is incident or from which its operation results.</u></p>	<p>816.181(a) Support facilities shall be operated in accordance with a permit issued for the mine or coal preparation operation to which it is incident or from which its operation results.</p>
17.b	<p>Chapter 4, Section 2(n)(ii) <u>In addition to the other provisions of this Chapter, mine facilities shall be located, maintained, and used in a manner that:</u></p>	<p>816.181(b) In addition to the other provisions of this part, support facilities shall be located, maintained, and used in a manner that-</p>
17.c	<p>Chapter 4, Section 2(j)(iv)(A)(III) and (V) (n)(ii)(A) Prevents or controls and minimize erosion and siltation, water pollution, and prevent damage to public or private property; ;</p>	<p>816.181(b)(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and</p>
17.d	<p>Chapter 4, Section 2(j)(iv)(A)(I) (n)(ii)(B) Prevent, To the extent possible using the best technology currently available; ;</p>	<p>816.181(b)(2) To the extent possible using the best technology currently available--</p>

	Proposed Rule	Counterpart Federal Rule - 30 CFR
17.e	Chapter 4, Section 2(j)(iv)(A)(I) (n)(ii)(B)(1.) <u>Minimizes</u> damage to fish, wildlife, and related environmental values; <u>and</u>	816.181(b)(2)(i) Minimizes damage to fish, wildlife, and related environmental values; and
17.f	Chapter 4, Section 2(j)(iv)(A)(I) (n)(ii)(B)(2.) <u>Minimizes</u> additional contributions of suspended solids to streamflow or runoff outside the affected land and permit area. Any such contributions shall not be in excess of limitations of State or Federal law or degrade the quality of receiving water.	816.181(b)(2)(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.
17.g	Chapter 4, Section 2(j)(iv)(A)(II) Control and minimize diminution or degradation of water quality and quantity.	<i>Water quality protection is provided by 30 CFR 816.181 (b)(1) above. No federal counterpart for water diminution with regards to support facilities exists within this subpart. However, Chapter 4, Section.2(i)(ii) addresses surface water quantity and adhering to the requirements of the approved permit are referenced in proposed Chapter 4, Section 2(n)(ii). All permits must include information regarding the monitoring of surface and groundwater quality and quantity as required by Chapter 4, Section 2(i).</i>
17.h	Chapter 4, Section 2(j)(iv)(A)(IV) Control and minimize air pollution.	<i>No federal counterpart in support facilities section. However, air pollution is addressed by LQD rule Chapter 4, Section 2.(q)</i>

Statement of Reasons for Amendment/Repeal 17:

These rules are proposed for amendment to coincide with the Federal rules which contain a separate section dealing with support facility (the LQD uses the term "mine" facility) operation performance standards.

The authority to amend these rules is provided by W.S. §§ 35-11-112(a)(i), 35-11-402(a)(vi) and 35-11-406(b)(xiii), (xiv) and (xviii).

18. Proposed Rule Amendment/Repeal:

Proposed Rule	Counterpart Federal Rule - 30 CFR
<p>Chapter 4, Section 2(j)(iv) Railroad and other transportation and mine facilities:</p> <p>(A) Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation and mine facilities shall be designed, constructed, or reconstructed, and maintained the area restored to:</p> <p>Chapter 4, Section 2(n x) All support buildings, including loading and storage facilities, plants, sheds, shops and other buildings shall be designed, constructed or reconstructed and located to prevent or control erosion, pollution, and damage to public or private property, fish, wildlife, and related environmental values. <u>Utility installations which are not part of the surface coal mining operation.</u> All operations shall be conducted so as to in a manner which minimizes damage, destruction, or disruption of any services provided by facilities oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, located on, under or through the permit area, unless otherwise permitted approved by the Administrator or owner of the utility installation facilities.</p>	<p>816.180 Utility Installations</p> <p>All surface coal mining operations shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the regulatory authority.</p>

Statement of Reasons Amendment/Repeal 18:

The Federal rules contain a separate section which deals specifically with utility installations which may traverse the mine, but do not provide service to the mine. These types of installations would not be considered to be "mine facilities" and consequently should not be regulated as such as is implied by the current rule. In order to accommodate this proposed rule adoption, a new subsection (x) will be created at the end of Chapter 4.

The authority to amend these rules is provided by W.S. §§ 35-11-112(a)(i) and 35-11-406(b)(v) and (xiii).

Additional Rules Which Require Amendment Because
of the Use of the Terms Primary and Ancillary Roads and Mine Facilities

19.a Proposed Rule Amendment: Chapter 1, Section 2

(ah) "Existing structure" means a structure or mine facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a State program pursuant to Section 503 of P.L. 95-87.

19.b Proposed Rule Amendment: Chapter 2, Section 2(a)

(v) A list identifying the Mine Safety and Health Administration identification number for all ~~mine-associated structures~~ mine facilities that require MSHA approval and licenses, permits or approvals needed by the applicant to conduct the proposed operation, whether and when they have been issued, the issuing authority, and the steps to be taken to comply with the requirements. To the extent possible, the Administrator and Director shall advise, consult and cooperate with the identified authorities so as to provide for the coordination of review and issuance of these licenses, permits or approvals with the permit to mine. This list shall contain:

(A) Copies or identifying numbers of all permits obtained from the State Engineer or from any other division of the Department, including Solid Waste Management, together with the following:

(I) Water Quality Information. The information from the application for the approved Water Quality permit which affirmatively demonstrates:

(1.) There is a detailed plan, with appropriate maps and cross-sections, for the construction and operation of any mine facility capable of causing or contributing to pollution of surface and groundwater. The plan shall be in accordance with Chapters III and XI, and as applicable Chapter X, of the Water Quality Division Rules and Regulations. As applicable, any plans shall include a copy of the NPDES permit granted by the Water Quality Division and quantitative limits on pollutants in discharges of water from all point sources.

19.c. Proposed Rule Amendment: Chapter 2, Section 2(b)

(iii) A narrative covering the area to be mined during the term of the permit, unless required for the permit area by the Administrator or as specified below, explaining the

location and plans for modification or construction, use, and maintenance of new mine ~~structures~~; facilities, signs and markers, dams, embankments, impoundments, and soil, coal and waste removal, handling, storage, cleaning, transportation and disposal areas. In addition, the narrative shall contain a plan of operation describing methods for minimizing interference with services in accordance with Chapter 4, Section 2(n). The narrative shall also include a map of the permit area identifying the location of existing structures, a description of their use and maintenance, and an explanation of whether they meet the requirements of Chapter 4 or the plan for removal, if required, or modification to comply with those standards in a manner which protects the environment and public health and safety.

19.d. Proposed Rule Amendment: Chapter 2, Section 2(b)

(xxi) Plans of mine facilities ~~or structures~~ (including overstrip areas) that are to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other application(s). Each permittee shall bond the mine facilities ~~or structures~~ unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the mine facilities ~~or structures~~. The agreement shall demonstrate to the satisfaction of the Administrator that all responsibilities under the Act and regulations for the mine facilities ~~or structures~~ will be met.

Statement of Reasons for rule Amendments 19a, b, c and d:

These amendments are proposed to maintain consistent use of the term "mine facility."

The authority to amend these rules is provided by W.S. §§ 35-11-103(e)(xx) and 35-11-112(a)(i).

Proposed Rule Amendment 20 is on the next page

20. Proposed Rule Amendment:

Proposed Rule	Counterpart Federal Rule - 30 CFR
Chapter 4, Section 2(c) Topsoil, subsoil, overburden, and refuse.	§ 816.22 Topsoil and subsoil
(i) Topsoil.	
<p>(A) All topsoil or approved surface material shall be removed from all areas to be affected in the permit area prior to these areas being affected unless otherwise authorized by the Administrator. The topsoil may be mixed with the subsoil but shall be segregated so as not to become mixed with spoil or waste material, stockpiled in the most advantageous manner and saved for reclamation purposes. The Administrator may authorize topsoil to remain on areas where minor disturbance <u>will occur such as associated with construction and installation activities including but not limited to light-use roads, signs, utility lines power poles, light traffic, fences lines, or monitoring stations and or drilling</u> provided that the minor disturbance will not destroy the protective vegetative cover <u>and will not increase erosion, nor adversely affect the soil resource.</u></p>	<p>(a) Removal. (1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.</p> <p>(3) The regulatory authority may choose not to require the removal of topsoil for minor disturbances which--</p> <p>(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or</p> <p>(ii) Will not destroy the existing vegetation and will not cause erosion.</p>

Statement of Reasons for Rule Amendment 20:

This rule is proposed for amendment to provide a non-exhaustive list of examples of disturbance which may warrant exemption from topsoil removal. When deciding whether a disturbance warrants topsoil removal or not, the Administrator will need to apply two disjunctive tests (as established by the OSM on May 16, 1983 [48 FR 22092]) to the disturbance being proposed:

"Either that the minor disturbance must occur at the site of small structures or that the minor disturbance will not destroy the existing vegetation and will not cause erosion. Although some topsoil could be lost at the site of small structures, the amount would be minimal."

In the Federal Register notice dated May 16, 1983 (48 FR 22092) the OSM further explained:

"Applying the tests provided, the regulatory authority has the discretion not to require topsoil removal for a variety of minor disturbances. Although the examples provided in the rule are not meant to be exhaustive, they are illustrative of the kinds of small structures that may be eligible for the exemption."

The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i), 35-11-402(a)(v) and 35-11-406(b)(viii).

21. Proposed Rule Amendment: Chapter 12 Procedures Applicable to Surface Coal Mining Operations

1(a)(v) The criteria contained in W.S. § 35-11-406(n)(iv) regarding Section 522(e) of P.L. 95-87 shall mean that,..... Subject to the above stated limitations, surface coal mining operations are prohibited or limited:

(D) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except where mine ~~access roads or haulage roads~~ primary roads join such right-of-way line. Provided, however, the Administrator may specifically authorize operations where the road is to be relocated, closed, or where the area affected lies within 100 feet of a public road. Such specific authorization shall follow public notice and an opportunity for public hearing, together with a finding on whether the interests of the public and the affected landowners will be protected from the proposed operation. The Administrator may rely upon the procedures and findings of the public road authority with jurisdiction over the road in specifically authorizing road relocations or closures;

Statement of Reasons for Amendment 21:

These amendments are proposed to maintain consistent use of the OSM road classification system.

The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i) and 35-11-406(b)(v).

22.a. Proposed Rule Amendment: Chapter 18, In Situ Mining

Section 3(c)(xvii) Contour map(s) which accurately locate and identify the permit area and show the location of any public ~~highways~~ roads, dwellings, utilities and easements within the permit area and adjacent lands in relation to all proposed affected lands and proposed activities associated with the operation including, but not limited to: plant site, chemical storage areas, well field areas, monitor wells, roads, temporary and permanent drainage diversions, impoundments, stockpiles for topsoil, ore product and waste, and all processing facilities.

22.b. Proposed Rule Amendment: Chapter 18, In Situ Mining

Section 3(d)(vi)(A) Cost of removing and disposing of ~~structures~~ mine facilities.

22.c. Proposed Rule Amendment: Chapter 18, In Situ Mining

Section 3(d)(ix) Procedures for removing and disposing of ~~structures~~ mine facilities used in conjunction with the mining operation.

Statement of Reasons for Rule Amendment 22.a, b and c:

These amendments are proposed to maintain consistent use of the term "public road" and "mine facility."

The authority to amend this rule is provided by W.S. §§ 35-11-103(e)(xx) and 35-11-112(a)(i).

Temporary and Excess Spoil Piles

23. Proposed Rule Amendment: Chapter 4, Section 2(c)(xi)

(c) Topsoil, subsoil, overburden, spoil, excess spoil, and refuse, coal mine waste, acid-forming materials, toxic materials and other wastes.

(xi) Overburden, spoil, excess spoil, and refuse.

(A) All overburden, spoil material and refuse shall be segregated from the topsoil and subsoil and stockpiled in such a manner to facilitate the earliest reclamation consistent with the approved reclamation plan.

(B) Except where diversions are authorized by these regulations, all overburden, spoil material, and refuse piles must be located to avoid blocking intermittent or perennial drainages and flood plains in order to minimize loss and spread of material due to water erosion. Ephemeral drainages may be blocked if environmentally sound methods for dealing with runoff control and sedimentation are approved by the Administrator.

(I) For temporary stockpiles, material should be replaced in pits as soon as possible consistent with the approved reclamation plan to minimize the amount of time material is stockpiled.

(C) All topsoil shall be removed from areas to be used for piling spoil material prior to the beginning of piling this material.

(D) The operator may be required to have analyses made of spoil material in order to determine if it will be a source of water pollution through reaction with leaching by surface water. If it is determined that this condition may exist, the operator shall describe proposed procedures for eliminating this condition.

(E) All overburden and spoil material that is determined to be toxic, acid-forming or will prevent adequate reestablishment of vegetation on the reclaimed land surface, unless such materials occur naturally on the land surface, must be properly disposed of during the mining operation.

(F) All temporary overburden and spoil piles shall be located, designed and constructed using prudent engineering practices. Slopes shall be stable and temporary piles shall not be located or placed on slopes that exceed 20 degrees unless the Administrator authorizes such placement based upon demonstrations that the pile will have a safety factor of 1.5 or better, and/or other precautionary design factors are provided to mitigate the steepness of the slope.

(G) Excess Spoil. In addition to the requirements provided in subsections (xi)(A) through (xi)(D) above (with the exception of (xi)(B)(I)), excess spoil piles shall be located, designed, constructed and inspected as prescribed below.

(I) Location Requirements:

(F) (1.) All excess spoil shall be placed in approved excess spoil disposal sites located within the permit area. ~~If permanent overburden, spoil, or refuse piles have been approved by the Administrator, t~~They shall be:

(F)a. Located on moderately sloping and naturally stable areas where placement provides for stability and prevents mass movement.

(F)b. Located in areas which do not contain springs, seeps, natural or man-made drainages (excluding rills and gullies), croplands, or important wildlife habitat.

(G)(2.) Excess spoil may be returned to underground mine workings in accordance with the plan approved by the Administrator and by MSHA.

(II) Design Standards:

(1.) All excess spoil shall be:

(F)(H)a. Designed, graded and contoured so as to blend in with the topography of the surrounding terrain. Excess spoil pile sites shall not be located on an overall slope that exceeds 20 degrees unless keyway cuts (excavations to stable bedrock), rock toe buttresses or other special structural provisions are constructed to ensure fill stability. The

operator must demonstrate to the satisfaction of the Administrator that this material will be stable and can be revegetated as required by this Section.

~~(F)(IV)b.~~ Designed so that all The slopes of all ~~spoil areas must be designed so that they~~ will be stabilized against wind and water erosion. After the grading and contouring of these stockpiles, topsoil or approved subsoil must be distributed over them in preparation for the revegetation procedure. Revegetation must be completed in accordance with requirements of this Chapter. A permanent drainage system must be established consistent with these regulations.

~~(H)c.~~ Excess spoil piles shall be d Designed using current, prudent professional standards and certified by a qualified registered professional engineer. All piles shall be designed and constructed in accordance with the standards of this subsection. Special structural provisions shall be designed using prudent current engineering practices, in accordance with Chapter 2, Section 2(b)(xviii)(E).

~~(L)(2.)~~ The foundation and abutments of the fill shall be stable under all conditions of construction. Sufficient foundation investigation and any necessary laboratory testing of foundation materials shall be performed in order to determine the design requirements for foundation stability. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

~~(P)(3.)~~ The Administrator may specify additional design criteria on a case-by-case basis as necessary to meet the general requirements of this subsection.

(III) Construction Standards:

~~(F)(1.)~~ Excess spoil shall be placed in a controlled manner to:

~~(H)a.~~ Prevent pollution from leachate and surface runoff from the fill on surface water or groundwater of the State.

~~(H)b.~~ Ensure mass stability and prevent mass movement during and after construction and provide for stable drainages and hillslopes.

~~(H)c.~~ Ensure that the land mass designated as the disposal site is suitable for reclamation and revegetation compatible with the natural surroundings and approved postmining land use.

~~(F)(2.)~~ The spoil pile shall be transported and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a minimum long-term static safety factor of 1.5.

The Administrator may limit the horizontal lifts to four feet or less as necessary to ensure the stability of the fill or to meet other applicable requirements.

~~(K)~~(3.) No water impoundments or large depressions shall be constructed on the fill. Soil conservation techniques may be approved if they are needed to minimize erosion, enhance wildlife habitat or assist revegetation, as long as they are not incompatible with the stability of the fill.

~~(M)~~(4.) Slope protection shall be provided to minimize surface erosion at the site. Diversion of surface water runoff shall conform with the requirements of subsection (e) of this Section. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

~~(N)~~(5.) Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

~~(O)~~(6.) Excess spoil that is toxic, acid-forming or combustible shall be adequately covered with suitable material or treated to prevent pollution of surface and groundwater, to prevent sustained combustion, and to minimize adverse affects on plant growth and the approved postmining land use.

~~(O)~~(IV) Inspection of excess spoil piles.

(1.) The fill shall be inspected for stability by a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods:

(1) a. foundation preparation, including the removal of all organic material and topsoil;

(2) b. placement of diversion systems;

(3) c. installation of final surface drainage systems; and

(4) d. final grading and revegetation.

(2.) Regular inspections by the engineer or specialist shall be conducted during placement and compaction of the fill materials. The registered professional engineer shall promptly provide certified reports to the Administrator which demonstrate that the fill has been maintained and constructed as specified in the design contained in the approved mining and reclamation plan. The report shall discuss appearances of instability, structural weakness, and other hazardous conditions. A copy of all inspection reports shall be retained at the mine site.

Statement of Reasons for Rule Amendment 23.

Prior to 1989, the regulations for both coal and noncoal were contained in the same set of regulations. With the passage of the federal Surface Mine Control and Reclamation Act (SMCRA) in 1977, states had to adopt regulations similar to the federal regulations in order to be granted primacy. To expedite the process, additional sections were added to the existing regulations. This was most apparent in Chapters 2 and 4. A new section 3 was added to each Chapter that applied only to coal. Section 2 of those Chapters applied to all mining. Rules concerning topics such as topsoil or overburden were found in both sections.

Over the years, it became apparent the organization of the regulations in this manner caused confusion and was not conducive to efficient operation of the coal and noncoal programs. In 1989, the regulations were split into two separate sets. One for coal and the other for noncoal. This first step only removed the noncoal regulations and did not reorganize or combine Sections 2 and 3 of Chapters 2 and 4. In 1994, the coal regulations were reorganized and the two sections were combined to further streamline the regulations.

There are specific requirements for excess spoil that do not apply to other spoil. Excess spoil occurs under a thick overburden mine condition where there is more spoil after it has swelled during removal than there is room in the pit. This excess spoil is then allowed to be placed outside the mine area. The general performance requirements for all spoil, including temporary spoil piles and excess spoil, are currently found at Chapter 4, Section 2(xi)(A) thru (E). The performance standards for excess spoil are currently found at (F) thru (Q).

Before the regulations were split, there were two distinct sections. One applying to all spoil and one applying to only excess spoil. When the two sections were combined in 1994, this distinction was inadvertently removed and under the current rules the specific requirements for excess spoil apply to all spoil. The formally proposed rule revisions presented in this amendment are intended to restore the original distinction concerning excess spoil.

New rule 2(c)(xi)(F) is proposed for adoption to make it clear that temporary overburden or spoil piles also warrant the use of prudent location, design and construction practices in order to ensure the safety and stability of these temporary piles. Temporary piles often remain in place for years to accommodate various mining plans and can pose a hazard to humans and the environment as a result of slumping and lateral movement if not appropriately designed, constructed and maintained.

The authority to amend these rules is provided by W.S. §§ 35-11-112(a)(i), 35-11-402(a)(ii) and (vi).

* * * * *

Appendix A

24. Proposed Rule Amendment: Appendix A, Appendix IV

Appendix IV - Plant Species of Special Concern

~~One plant species in Wyoming is currently listed as Threatened (T) and another is listed as Endangered (E) under the federal Endangered Species Act. Two other species are candidates (C) for potential listing. These plants are noted by their assigned ranking in parentheses. However, there are many additional species occurring within Wyoming which may be considered for formal listing in the future. State and federal agencies have historically afforded these species special consideration until their status is accurately assessed.~~

~~Presented below are those species currently (as of January, 2001) listed as Threatened (T), Endangered (E), or Candidates (C). In addition to this list, the Administrator will compile a list of those species that deserve special consideration. This list will be made available to the public and will be updated as determined by the Administrator.~~

~~*Gaura neomexicana* ssp. *coloradensis* (C)~~

~~*Penstemon haydenii* (E)~~

~~*Spiranthes diluvialis* (T)~~

~~*Yermo xanthocephalus* (C)~~

The United States Fish and Wildlife Service (USFWS) has declared several plant species which exist within Wyoming as threatened, endangered or proposed threatened under the Federal Endangered Species Act. The list of species and their accompanying status can change over time. Therefore, rather than try to keep an updated list within this Appendix, the Land Quality Division advises coal mine permit applicants to contact the USFWS office in Cheyenne for the most current compilation of plant species listed by the USFWS prior to conducting the vegetation baseline sampling for a coal permit application or amendment. The phone number for this office is (307) 772-2374.

Statement of Reasons for Amendment 24:

The United States Fish and Wildlife Service (USFWS) has the authority under the Federal Endangered Species Act to list plant species as threatened, endangered or proposed threatened. This list of plant species changes over time. The Land Quality Division has attempted to keep this list up-to-date within this Appendix. However, because this Appendix must be revised through formal rulemaking which entails a lengthy process, it is no longer possible to keep this Appendix IV current. Consequently, Appendix IV is being revised to direct the reader to the USFWS Office to obtain the latest list of plant species to be aware of when conducting the vegetation baseline sampling for a coal permit area.

The authority to amend this rule is provided by W.S. §§ 35-11-112(a)(i) and 35-11-406(a)(vii).

Attachment I - Roads, Mine Facilities and Temporary and Excess Spoil Piles

Chapters 1, 2 and 4 With Strike and Underline

Chapter 1

AUTHORITIES AND DEFINITIONS

Section 2. **Definitions.** The definitions included in the Wyoming Environmental Quality Act, are hereby adopted by this reference. All references to the "Act" herein refer to the Wyoming Environmental Quality Act, as amended

(bu) "Public road" means a road: any thoroughfare open to the public which has been and is being used by the public for passage of vehicles, and is maintained by public funds:

(i) Which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(ii) Which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;

(iii) For which there is substantial (more than incidental) public use; and

(iv) Which meets road construction standards for other public roads of the same classification in the local jurisdiction.

(bz) "Road(s)" means a surface ~~right-of-way~~ corridor of affected land associated with for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface drainage features. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas. Immediate mining area refers to areas subject to frequent surface changes. This includes areas where topsoil and overburden are being moved and areas undergoing active reclamation. Roads shall be classified to include:

(i) ~~Haul roads: all roads utilized for the transport of the extracted mineral, overburden, or other earthen materials.~~

(ii) ~~Access roads: all roads, exclusive of haul and light-use roads, utilized for the transportation of personnel, equipment, and small payloads of material within the permit area.~~

(iii) ~~Light-use roads: those roads established and utilized for exploration, for occasional inspection of monitoring equipment, weather station, test plots, or for other purposes necessary to comply with the requirements of these regulations. Light-use roads shall be limited to:~~

~~(A) Roads or portions thereof which exist for less than six months and where the road is constructed by grading, cutting, filling or other methods whereby the natural land surface is disturbed; or~~

~~(B) Noneconstructed roads where the natural land surface is not physically altered by same course construction or grading; however a two-tracked road occurs due to vehicle travel over the same course. Noneconstructed roads may include pioneer construction roads or roads used for transport of spoil and topsoil to stockpile sites which exist for not greater than two weeks and are then stabilized or replaced in accordance with these requirements.~~

~~(iv) Exempted roads: roads within the pit and those roads maintained by the county, State or Federal government or those roads which are existing private roads except:~~

~~(A) When the existing road requires extensive regrading and resurfacing in order to render the road usable; or~~

~~(B) Upgrading of the road requires cuts, fills, and borrow areas.~~

Chapter 2

PERMIT APPLICATION REQUIREMENTS

Section 2. **Application Content Requirements for Surface Coal Mining Operations**

(a) In addition to that information required by W.S. § 35-11-406(a), each application for a surface coal mining permit shall contain:

(i) A complete identification of interests, which shall include:

(A) All owners of record of the property to be mined including legal and equitable owners, holders of record of any leasehold interest, and any purchaser of record under a real estate contract for the property to be mined;

(B) If the applicant is a business entity other than a single proprietorship, then the names and addresses of all limited and general partners, or if a corporation then the names and addresses of principal shareholder, officers and director or other person performing a function similar to a director, and resident agent(s) of the applicant. This shall also include the names under which the applicant, partner or principal shareholder operates or previously operated a surface coal mining operation in the United States within the five years preceding the date of application;

(C) A statement and identification of any pending, current or previous surface coal mining permit in the United States held by the applicant, partner or principal shareholder during the five years preceding the date of the application. This shall also identify the regulatory authority with jurisdiction over the operation; and

(D) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the proposed permit area.

~~(b)(iv)(G)(F)~~ (E) Legal ownership - if the operator includes roads or spur lines within the permit area but does not possess the mineral rights or the right-to-mine for these lands, the legal land description shall then be listed in the application as a separate subsection in Appendix "C". The heading of the subsection shall make it clear that the right-to-mine is not claimed on the described lands. Surface owners shall be listed for all lands crossed by spur lines and roads.

(b) In addition to that information required by W.S. § 35-11-406(b), each application for a surface coal mining permit shall contain:

(i) A complete operations plan proposed to be conducted during the life of the mine including:

(A) A narrative description of the type and method of mining, the number of acres that will be affected annually, overburden and mineral removal and transport, anticipated annual and total production by tonnage, and the major equipment to be used for all aspects of the operations.

(B) A map showing the estimated orderly progression of mining and reclamation on all proposed affected lands.

(C) The size, sequence and timing of the areas for which it is anticipated that renewed permits for mining will be requested over the estimated total life of the proposed operation.

(D) Cross-sections, and/or maps and plans of the area to be mined during the term of the permit, unless required for the permit area by the Administrator or as specified below, certified by a registered professional engineer or professional geologist, showing:

(V) ~~The location, construction and maintenance of mine facilities.~~ The location, construction and maintenance of coal stockpiles, temporary and excess spoil piles shall be provided for the permit area;

(E) A description, plans, and drawings for each mine facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross-sections, design drawings, and specifications sufficient to demonstrate compliance with section 2(n) of Chapter 4 for each facility.

(F) A map of the permit area which clearly shows that a railroad spur(s) which provides exclusive service to that particular permit is being included within the permit boundary from the point that it provides such service. This spur(s) shall be covered by a reclamation bond.

(iv) A plan whereby the operator will reclaim the affected lands to the proposed postmining land use in accordance with Chapter 4, Section 2(a) which shall include:

(G) ~~A classification and description, including maps and cross-sections, if appropriate, of all roads (except exempted roads), other transportation facilities, shipping areas and rights-of-way to be built or utilized during the operation. The classification shall designate the road as either a haul road, access road, or light-use road. The description shall include:~~

Ch. 2, Sec.(a)(i)(E) ~~(F) Legal ownership~~ if the operator includes roads or spur lines within the permit area but does not possess the mineral rights or the right to mine for these lands, the legal land description shall then be listed in the application as a separate subsection in Appendix "C". The heading of the subsection shall make it clear that the right to mine is not claimed on the described lands. ~~Surface owners shall be listed for all lands crossed by spur lines and roads.~~ *(relocated to Chapter 2, Section 2(a)(i)(E), page 55 above)*

~~(H) All information necessary to show compliance with the requirements of Chapter 4, Section 2.(j):~~

~~(iv)(H) (G)~~ A plan for the disposal of buildings and structures mine facilities, erected, used or modified by the applicant in accordance with the requirements of Chapter 4, Section 2(m).

~~(xix) Road Systems. A complete description covering the area to be mined during the term of the permit of roads and other transportation facilities, and a general location of proposed roads for the permit area. The description shall include, but not be limited to the following:~~

~~(A) Each applicant shall submit plans and drawings for each road as defined in Chapter 1 to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall:~~

~~(A)(I) Include a map, appropriate cross-sections, design drawings and specifications for each road widths, road gradients, road surfacing materials, road cuts, fill embankments, culverts, bridges, drainage ditches, and drainage structures and low-water crossings;~~

~~(B) A report of appropriate geotechnical analysis to demonstrate that steep-cut slopes and embankments will meet minimum safety factors; (relocated to proposed Chapter 4, Section 2(j)(vii)(B), page 65 of this Attachment)~~

~~(II) Contain the drawings and specifications of each proposed road that is located in the channel of an ephemeral stream that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent or any perennial stream, as necessary for approval of the road by the Administrator in accordance with Chapter 4, Section 2(j)(iv)(A);:~~

~~(III) Contain the drawings and specifications for each proposed ford of intermittent or perennial streams that is used as a temporary route, as necessary for approval of the ford by the Administrator in accordance with Chapter 4, Section 2(j)(vii)(C)(II);~~

~~(C)~~ (IV) Contain a description of measures to be taken to obtain approval of from the Administrator for alteration or relocation of a natural ~~drainageway~~ stream channel under Chapter 4, Section 2(j)(vii)(D)(IV);

(V) Contain the drawings and specifications for each low-water crossing of an ephemeral stream channel that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent stream channel or any perennial stream channel so that the Administrator can maximize the protection of the stream in accordance with Chapter 4, Section 2(j)(vii)(D)(VI); and

(VI) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

~~(D)~~ A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the Administrator.

(B) The plans and drawings for each primary road (as defined in Chapter 4, Section 2(j)(i)(B)) shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of this Chapter and current, prudent engineering practices.

Chapter 4

ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

Section 2. **General Environmental Protection Performance Standards.**

(c) Topsoil, subsoil, overburden, spoil, excess spoil, and refuse, coal mine waste, acid-forming materials, toxic materials and other wastes.

(i) Topsoil

(A) All topsoil or approved surface material shall be removed from all areas to be affected in the permit area prior to these areas being affected unless otherwise authorized by the Administrator. The topsoil may be mixed with the subsoil but shall be segregated so as not to become mixed with spoil or waste material, stockpiled in the most advantageous manner and saved for reclamation purposes. The Administrator may authorize topsoil to remain on areas where minor disturbance will occur such as associated with construction and installation activities including but not limited to light-use roads, signs, utility lines power poles, light traffic, fences lines, or monitoring stations and or drilling provided that the minor disturbance will not destroy the protective vegetative cover and will not increase erosion, nor adversely affect the soil resource.

(xi) Overburden, spoil, excess spoil, and refuse.

(A) All overburden, spoil material and refuse shall be segregated from the topsoil and subsoil and stockpiled in such a manner to facilitate the earliest reclamation consistent with the approved reclamation plan.

(B) Except where diversions are authorized by these regulations, all overburden, spoil material, and refuse piles must be located to avoid blocking intermittent or perennial drainages and flood plains in order to minimize loss and spread of material due to water erosion. Ephemeral drainages may be blocked if environmentally sound methods for dealing with runoff control and sedimentation are approved by the Administrator.

(I) For temporary stockpiles, material should be replaced in pits as soon as possible consistent with the approved reclamation plan to minimize the amount of time material is stockpiled.

(C) All topsoil shall be removed from areas to be used for piling spoil material prior to the beginning of piling this material.

(D) The operator may be required to have analyses made of spoil material in order to determine if it will be a source of water pollution through reaction with leaching by surface water. If it is determined that this condition may exist, the operator shall describe proposed procedures for eliminating this condition.

(E) All overburden and spoil material that is determined to be toxic, acid-forming or will prevent adequate reestablishment of vegetation on the reclaimed land surface, unless such materials occur naturally on the land surface, must be properly disposed of during the mining operation.

(F) All temporary overburden and spoil piles shall be located, designed and constructed using prudent engineering practices. Slopes shall be stable and temporary piles shall not be located or placed on slopes that exceed 20 degrees unless the Administrator authorizes such placement based upon demonstrations that the pile will have a safety factor of 1.5 or better, and/or other precautionary design factors are provided to mitigate the steepness of the slope.

(G) Excess Spoil. In addition to the requirements provided in subsections (xi)(A) through (xi)(D) above (with the exception of (xi)(B)(I)), excess spoil piles shall be located, designed, constructed and inspected as prescribed below.

(I) Location Requirements:

(F) (1.) All excess spoil shall be placed in approved excess spoil disposal sites located within the permit area. ~~If permanent overburden, spoil, or refuse piles have been approved by the Administrator, they shall be:~~

(F)a. Located on moderately sloping and naturally stable areas where placement provides for stability and prevents mass movement.

(F)b. Located in areas which do not contain springs, seeps, natural or man-made drainages (excluding rills and gullies), croplands, or important wildlife habitat.

(G)(2.) Excess spoil may be returned to underground mine workings in accordance with the plan approved by the Administrator and by MSHA.

(II) Design Standards:

(1.) All excess spoil shall be:

~~(F)(III)a.~~ Designed, graded and contoured so as to blend in with the topography of the surrounding terrain. Excess spoil pile sites shall not be located on an overall slope that exceeds 20 degrees unless keyway cuts (excavations to stable bedrock), rock toe buttresses or other special structural provisions are constructed to ensure fill stability. The operator must demonstrate to the satisfaction of the Administrator that this material will be stable and can be revegetated as required by this Section.

~~(F)(IV)b.~~ Designed so that all The slopes of all ~~spoil areas must be designed so that they~~ will be stabilized against wind and water erosion. After the grading and contouring of these stockpiles, topsoil or approved subsoil must be distributed over them in preparation for the revegetation procedure. Revegetation must be completed in accordance with requirements of this Chapter. A permanent drainage system must be established consistent with these regulations.

~~(H)c.~~ Excess spoil piles shall be d Designed using current, prudent professional standards and certified by a qualified registered professional engineer. All piles shall be designed and constructed in accordance with the standards of this subsection. Special structural provisions shall be designed using prudent current engineering practices, in accordance with Chapter 2, Section 2(b)(xviii)(E).

~~(L)(2.)~~ The foundation and abutments of the fill shall be stable under all conditions of construction. Sufficient foundation investigation and any necessary laboratory testing of foundation materials shall be performed in order to determine the design requirements for foundation stability. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

~~(P)(3.)~~ The Administrator may specify additional design criteria on a case-by-case basis as necessary to meet the general requirements of this subsection.

(III) Construction Standards:

~~(+)(1.)~~ Excess spoil shall be placed in a controlled manner to:

~~(+a.~~ Prevent pollution from leachate and surface runoff from the fill on surface water or groundwater of the State.

~~(H)b.~~ Ensure mass stability and prevent mass movement during and after construction and provide for stable drainages and hillslopes.

(HH)c. Ensure that the land mass designated as the disposal site is suitable for reclamation and revegetation compatible with the natural surroundings and approved postmining land use.

(J)(2.) The spoil pile shall be transported and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a minimum long-term static safety factor of 1.5. The Administrator may limit the horizontal lifts to four feet or less as necessary to ensure the stability of the fill or to meet other applicable requirements.

(K)(3.) No water impoundments or large depressions shall be constructed on the fill. Soil conservation techniques may be approved if they are needed to minimize erosion, enhance wildlife habitat or assist revegetation, as long as they are not incompatible with the stability of the fill.

(M)(4.) Slope protection shall be provided to minimize surface erosion at the site. Diversion of surface water runoff shall conform with the requirements of subsection (e) of this Section. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(N)(5.) Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

(O)(6.) Excess spoil that is toxic, acid-forming or combustible shall be adequately covered with suitable material or treated to prevent pollution of surface and groundwater, to prevent sustained combustion, and to minimize adverse affects on plant growth and the approved postmining land use.

(O)(IV) Inspection of excess spoil piles.

(1.) The fill shall be inspected for stability by a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods:

(1) a. foundation preparation, including the removal of all organic material and topsoil;

(2) b. placement of diversion systems;

(3) c. installation of final surface drainage systems; and

(4) d. final grading and revegetation.

(2.) Regular inspections by the engineer or specialist shall be conducted during placement and compaction of the fill materials. The registered professional engineer shall promptly provide certified reports to the Administrator which demonstrate that the fill has been maintained and constructed as specified in the design contained in the approved mining and reclamation plan. The report shall discuss appearances of instability, structural weakness, and other hazardous conditions. A copy of all inspection reports shall be retained at the mine site.

(j) ~~Roads and other transportation facilities:~~

(i) ~~General standards for all transportation facilities:~~ Road classification system.

(A) Each road, as defined in Chapter 1, shall be classified as either a primary road or an ancillary road.

(B) A primary road is any road which is:

(I) Used for transporting mineral or spoil;

(II) Frequently used for access or other purposes for a period in excess of six months; or

(III) To be retained for an approved postmining land use.

(C) An ancillary road is any road not classified as a primary road.

(A) ~~Roads and railroads. Constructed or upgraded roads and railroad spurs shall be included within the permit area from that point that they provide exclusive service and shall be covered by a reclamation bond. (The latter portion of this sentence beginning with "and railroad spurs" has been relocated to Chapter 2, Section 2(b)(i)(F) shown on page 55 of this Attachment)~~

(B) ~~Roads shall not be constructed up a stream channel or so close that the material shall spill into the channel, unless specifically approved by the Administrator.~~

~~(C) Streams shall be crossed at or near right angles unless contouring down to the streambed will result in less potential stream bank erosion. Structure of ford entrances and exits must be constructed to prevent water from flowing down the roadway.~~

~~(D) Drainage control structures shall be used as necessary to control runoff and to minimize erosion, sedimentation and flooding. Drainage facilities shall be installed as road construction progresses.~~

~~(E) Culverts shall be installed at prominent drainageways, or as required by the Administrator. Where necessary, culverts must be protected from erosion by adequate rock, concrete or riprap. Culverts and drainage pipes shall be constructed to avoid plugging, collapsing, or erosion at inlets and outlets.~~

~~(F) Trees and vegetation may be cleared only for the essential width necessary to maintain slope stability and to serve traffic needs.~~

~~(G) Access, haul roads and drainage structures shall be routinely maintained.~~

(ii) ~~General performance standards for haul roads, access roads or light-use roads. standards. Each road shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:~~

~~(A) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;~~

~~(B) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;~~

~~(C) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;~~

~~(D) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;~~

~~(ii)(D)(E) The normal flow of water in streambeds and drainage channels shall not be significantly seriously altered. Damage to public or private property shall be prevented or controlled. ;~~

(ii)(C) ~~To the extent possible using the best technology currently available, roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the affected land or permit area. Any such contribution shall not be in excess of limitations of State or Federal law or degrade the quality of receiving water.~~

(F) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands listed in Chapter 12, Section 1(a)(v)(A), and;

(ii)(G) ~~All roads shall be maintained and/or repaired, if damaged, to meet the performance standards of this subsection.~~

(ii)(H) ~~All roads shall be closed to vehicular travel when no longer needed and reclaimed in accordance with this Chapter, unless the road is retained for use under an approved postmining land use.~~

(ii)(B)(G) Use nonacid- or nontoxic-forming substances shall not be used
in road surfacing.

(iii) Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices.

(iv) Location.

(A) No part of any road shall be located in the channel of an ephemeral stream that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent stream channel or any perennial stream channel unless specifically approved by the Administrator in accordance with subsections 2(c), 2(e), 2(f), 2(h), 2(i), 2(r)(ii) and 2(w) of this Chapter and Section 2(a)(i) of Chapter 19.

(B) Roads shall be located to minimize downstream sedimentation and flooding.

(v) Maintenance.

(A) A road shall be maintained to meet the performance standards of this Chapter.

(B) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(vi) Reclamation. A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(A) Closing the road to traffic;

(B) Removing all bridges unless approved as part of the postmining land use and removing all culverts unless approved as part of the postmining land use or approved for burial in place;

(C) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(D) Reshaping cut-and-fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(E) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion, and

(F) Scarifying or ripping the roadbed, replacing topsoil, subsoil or substitute material and revegetating disturbed surfaces in accordance with subsections 2(c)(i) through 2(c)(x) and 2(d) of this Chapter.

(iii)(vii) Performance standards for haul roads and access roads: Primary roads.

(iii)(A) Certification. Design and construction: The design and construction or reconstruction of haul roads and access primary roads shall be certified in a report to the Administrator by a registered professional engineer. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan. The report shall be available for review at the mine site within 30 days following the completion of construction of each primary road. as meeting the requirements of this subsection; current, prudent engineering practices; and any design criteria required by the Administrator.

(ii)(E)(B) All Each primary road embankments shall have, at a minimum, a static safety factors of 1.3 or meet the requirements established under Chapter 2, Section 2(b)(xix)(B).

(C) Location.

(ii)(A) (I) ~~Roads shall be located on ridges or on the most stable available slopes to minimize erosion, sedimentation and flooding. All exposed surfaces shall be stabilized in accordance with current, prudent engineering practices. To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.~~

(iii)(B) (II) ~~Stream f~~Fords of intermittent or perennial streams by primary roads are prohibited unless they are specifically approved by the Administrator as temporary routes during periods of road construction.

(iii)(C)(~~F~~)(D) Drainage control. In accordance with the approved plan:

(iii)(C) (I) ~~Haul and access~~ Each primary roads shall be designed, constructed, or reconstructed and maintained with to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. capable of The drainage control system shall be designed to safely passing the peak runoff from a 10-year, 6-hour precipitation event, or greater event a storm duration having a greater peak flow unless otherwise as specified specifically approved by the Administrator; The drainage control system shall include, but not be limited to bridges, culverts, ditches, cross drains, and ditch relief drains.

(iii)(C) (II) ~~All d~~Drainage pipes or and culverts shall be installed as designed, constructed and maintained in a free and operating condition and to prevent or control to avoid plugging, collapse and erosion at inlets and outlets;

(iii)(C)(V) (III) Drainage ditches shall be designed constructed and maintained to prevent uncontrolled drainage over the road surface and embankment; Trash racks and debris basins shall be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

(iii)(C)(III) (IV) ~~All e~~Culverts shall be designed, constructed installed, and maintained to sustain the vertical soil pressure, passive resistance of the foundation, and the weight of vehicles to be using the road;

(iii)(C)(IV) (V) ~~Ephemeral (shown on a USGS 7.5 minute series quad), Intermittent, or perennial~~ Natural streams channels shall not be altered or relocated for road construction or reconstruction without the prior approval from of the Administrator in accordance with applicable Sections 2(c), 2(e), 2(f), 2(h), 2(i), 2(r)(ii) and 2(w) of this Chapter and Section 2(a)(i) of Chapter 19; and then, only if the natural channel drainage is not blocked except during periods of low flow or when flow has been acceptably diverted around the site, there is no significant damage to hydrologic balance, and there is no adverse impact on adjoining landowners.

~~(iii)(C)(VI)~~ (VI) Except as provided in ~~(B) above~~ (vii)(C)(II) of this section, drainage structures which are used for stream channel crossings of ephemeral streams that have the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent stream or any perennial stream shall be made using bridges, culverts, low-water crossings or other structures designed, constructed, and maintained using current, prudent engineering practices. The Administrator shall ensure that low-water crossings are designed, constructed and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

~~(iii)(D)~~ (E) Surfacing: Primary Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Administrator as being sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be using the road.

~~(iii)(E)~~ Maintenance: Routine maintenance shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It shall also include revegetation, brush removal, and minor reconstruction of road segments as necessary.

~~(iv)~~ Railroad and other transportation and mine facilities:

~~(A)~~ Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation and mine facilities shall be designed, constructed, or reconstructed, and maintained the area restored to:

~~(B)~~ Railroads and other transportation and mine facility areas shall be reclaimed when no longer needed for the operation in accordance with the requirements of this Chapter.

~~(i)(H)~~ (viii) Exemptions concerning roads.

~~(H)~~ (A) If approval is obtained from the surface landowner to leave a road unreclaimed, an operator may request in writing to the Land Quality Division that a road be permitted to remain unreclaimed. The operator must furnish proof of the surface landowner's approval. Final decision of road reclamation will be made by the Land Quality Division Administrator.

~~(H)~~ (B) In the event that the surface landowner, a city or town, another agency of the State of Wyoming or an agency of the United States government has requested that a road not be reclaimed, no bond shall be required of the applicant for the reclamation of the road and reclamation of the road shall not be required; provided, however, that the Administrator receives a copy of the written request from the surface owner, city or town, or agency of the State or Federal Government, for retention of the road.

(m) Disposal of ~~buildings and structures~~ mine facilities.

(i) All ~~buildings and structures~~ mine facilities constructed, used or improved by the operator must be removed or dismantled and shall be reclaimed in accordance with the requirements of this Chapter when no longer needed for the operation unless it can be demonstrated to the Administrator's satisfaction that the buildings or structures will be of beneficial use in accomplishing the proposed use of the land after reclamation or for environmental monitoring.

(ii) If the operator does not wish to remove certain ~~buildings or~~ mine facilities, ~~he the operator~~ must obtain the written consent of the surface landowner to leave the ~~buildings or~~ mine facilities intact. The operator must make a request in writing, providing written proof of the above to the Land Quality Division, that the ~~buildings or~~ mine facilities be permitted to remain intact.

(n) Mine Facilities. ~~All support buildings, including loading and storage facilities, plants, sheds, shops and other buildings shall be designed, constructed or reconstructed and located to prevent or control erosion, pollution, and damage to public or private property, fish, wildlife, and related environmental values.~~

(i) Mine facilities shall be operated in accordance with the permit issued for the mine or coal preparation operation to which it is incident or from which its operation results.

(ii) In addition to the other provisions of this Chapter, mine facilities shall be located, maintained, and used in a manner that:

~~(j)(iv)(A)(III) and (V)~~ (A) Prevents or ~~controls~~ and minimize erosion and siltation, water pollution, and ~~prevent~~ damage to public or private property; and

~~(j)(iv)(A)(I)~~ (B) Prevent, To the extent possible using the best technology currently available;_;

~~(j)(iv)(A)(I)~~ (1.) Minimizes damage to fish, wildlife, and related environmental values; and

~~(j)(iv)(A)(I)~~ (2.) Minimizes additional contributions of suspended solids to streamflow or runoff outside the ~~affected land and~~ permit area. Any such contributions shall not be in excess of limitations of State or Federal law ~~or degrade the quality of receiving water.~~

~~(j)(iv)(A)(II)~~ Control and minimize diminution or degradation of water quality and quantity.

~~(j)(iv)(A)(IV) Control and minimize air pollution.~~

~~(n x)~~ All support buildings, including loading and storage facilities, plants, sheds, shops and other buildings shall be designed, constructed or reconstructed and located to prevent or control erosion, pollution, and damage to public or private property, fish, wildlife, and related environmental values: Utility installations which are not part of the surface coal mining operation. All operations shall be conducted ~~so as to~~ in a manner which minimizes damage, destruction, or disruption of any services provided by facilities oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, located on, under or through the permit area, unless otherwise ~~permitted~~ approved by the Administrator or owner of the utility installation facilities.

Attachment II - Roads, Mine Facilities and Temporary and Excess Spoil Piles

Proposed Amended Portions of Chapters 1, 2
and 4 as They Would Appear if Adopted

Attachment II - Roads, Mine Facilities and Temporary and Excess Spoil Piles

Chapters 1, 2 and 4 as They Would Appear if Adopted

Chapter 1

AUTHORITIES AND DEFINITIONS

Section 2. **Definitions.**

(bu) "Public road" means a road:

- (i) Which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;
- (ii) Which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;
- (iii) For which there is substantial (more than incidental) public use; and
- (iv) Which meets road construction standards for other public roads of the same classification in the local jurisdiction.

(bz) "Road(s)" means a surface corridor of affected land associated with travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas. Immediate mining area refers to areas subject to frequent surface changes. This includes areas where topsoil and overburden are being moved and areas undergoing active reclamation.

Chapter 2

Section 2. **Application Content Requirements for Surface Coal Mining Operations**

(a) In addition to that information required by W.S. § 35-11-406(a), each application for a surface coal mining permit shall contain:

(i) A complete identification of interests, which shall include:

(E) Legal ownership - if the operator includes roads or spur lines within the permit area but does not possess the mineral rights or the right-to-mine for these lands, the legal land description shall then be listed in the application as a separate subsection in Appendix "C". The heading of the subsection shall make it clear that the right-to-mine is not claimed on the described lands. Surface owners shall be listed for all lands crossed by spur lines and roads.

(b) In addition to that information required by W.S. § 35-11-406(b), each application for a surface coal mining permit shall contain:

(i) A complete operations plan proposed to be conducted during the life of the mine including:

(D) Cross-sections, and/or maps and plans of the area to be mined during the term of the permit, unless required for the permit area by the Administrator or as specified below, certified by a registered professional engineer or professional geologist, showing:

(V) The location, construction and maintenance of coal stockpiles, temporary and excess spoil piles shall be provided for the permit area;

(E) A description, plans, and drawings for each mine facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross-sections, design drawings, and specifications sufficient to demonstrate compliance with section 2(n) of Chapter 4 for each facility.

(F) Railroad spurs shall be included within the permit area from that point that they provide exclusive service and shall be covered by a reclamation bond.

(iv) A plan whereby the operator will reclaim the affected lands to the proposed postmining land use in accordance with Chapter 4, Section 2(a) which shall include:

(G) A plan for the disposal of buildings and structures, permitted as mine facilities, erected, used or modified by the applicant in accordance with the requirements of Chapter 4, Section 2(m).

(xix) Road Systems.

(A) Each applicant shall submit plans and drawings for each road as defined in Chapter 1 to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall:

(I) Include a map, appropriate cross-sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, drainage structures and low-water crossings;

(II) Contain the drawings and specifications of each proposed road that is located in the channel of an ephemeral stream that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent or any perennial stream, as necessary for approval of the road by the Administrator in accordance with Chapter 4, Section 2(j)(iv)(A);

(III) Contain the drawings and specifications for each proposed ford of intermittent or perennial streams that is used as a temporary route, as necessary for approval of the ford by the Administrator in accordance with Chapter 4, Section 2(j)(vii)(C)(II);

(IV) Contain a description of measures to be taken to obtain approval from the Administrator for alteration or relocation of a natural stream channel under Chapter 4, Sec.2(j)(vii)(D)(V);

(V) Contain the drawings and specifications for each low-water crossing of an ephemeral stream channel that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent stream channel or any perennial stream channel so that the Administrator can maximize the protection of the stream in accordance with Chapter 4, Section 2(j)(vii)(D)(VI); and

(VI) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(B) The plans and drawings for each primary road (as defined in Chapter 4, Section 2(j)(i)(B)) shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of this Chapter and current, prudent engineering practices.

Chapter 4

Section 2. **General Environmental Protection Performance Standards.**

(c) Topsoil, subsoil, overburden, spoil, excess spoil, refuse, coal mine waste, acid-forming materials, toxic materials and other wastes.

(i) Topsoil

(A) All topsoil or approved surface material shall be removed from all areas to be affected in the permit area prior to these areas being affected unless otherwise authorized by the Administrator. The topsoil may be mixed with the subsoil but shall be segregated so as not to become mixed with spoil or waste material, stockpiled in the most advantageous manner and saved for reclamation purposes. The Administrator may authorize topsoil to remain on areas where minor disturbance will occur such as signs, power poles, light traffic, fence lines, monitoring stations or drilling provided that the minor disturbance will not destroy the protective vegetative cover and will not increase erosion.

(xi) Overburden, spoil, excess spoil, and refuse.

(A) All overburden, spoil material and refuse shall be segregated from the topsoil and subsoil and stockpiled in such a manner to facilitate the earliest reclamation consistent with the approved reclamation plan.

(B) Except where diversions are authorized by these regulations, all overburden, spoil material, and refuse piles must be located to avoid blocking intermittent or perennial drainages and flood plains in order to minimize loss and spread of material due to water erosion. Ephemeral drainages may be blocked if environmentally sound methods for dealing with runoff control and sedimentation are approved by the Administrator.

(I) For temporary stockpiles, material should be replaced in pits as soon as possible consistent with the approved reclamation plan to minimize the amount of time material is stockpiled.

(C) All topsoil shall be removed from areas to be used for piling spoil material prior to the beginning of piling this material.

(D) The operator may be required to have analyses made of spoil material in order to determine if it will be a source of water pollution through reaction with leaching by surface water. If it is determined that this condition may exist, the operator shall describe proposed procedures for eliminating this condition.

(E) All overburden and spoil material that is determined to be toxic, acid-forming or will prevent adequate reestablishment of vegetation on the reclaimed land surface, unless such materials occur naturally on the land surface, must be properly disposed of during the mining operation.

(F) All temporary overburden and spoil piles shall be located, designed and constructed using prudent engineering practices. Slopes shall be stable and temporary piles shall not be located or placed on slopes that exceed 20 degrees unless the Administrator authorizes such placement based upon demonstrations that the pile will have a safety factor of 1.5 or better, and/or other precautionary design factors are provided to mitigate the steepness of the slope.

(G) Excess Spoil. In addition to the requirements provided in subsections (xi)(A) through (xi)(D) above (with the exception of (xi)(B)(I)), excess spoil piles shall be located, designed, constructed and inspected as prescribed below.

(I) Location Requirements:

(1.) All excess spoil shall be placed in approved excess spoil disposal sites located within the permit area. They shall be:

a. Located on moderately sloping and naturally stable areas where placement provides for stability and prevents mass movement.

b. Located in areas which do not contain springs, seeps, natural or man-made drainages (excluding rills and gullies), croplands, or important wildlife habitat.

(2.) Excess spoil may be returned to underground mine workings in accordance with the plan approved by the Administrator and by MSHA.

(II) Design Standards:

(1.) All excess spoil shall be:

a. Designed, graded and contoured so as to blend in with the topography of the surrounding terrain. Excess spoil pile sites shall not be located on an overall slope that exceeds 20 degrees unless keyway cuts (excavations to stable bedrock), rock toe buttresses or other special structural provisions are constructed to ensure fill stability. The operator must demonstrate to the satisfaction of the Administrator that this material will be stable and can be revegetated as required by this Section.

b. Designed so that all slopes will be stabilized against wind and water erosion. After the grading and contouring of these stockpiles, topsoil or approved subsoil must be distributed over them in preparation for the revegetation procedure. Revegetation must be completed in accordance with requirements of this Chapter. A permanent drainage system must be established consistent with these regulations.

c. Designed using current, prudent professional standards and certified by a qualified registered professional engineer. All piles shall be designed and constructed in accordance with the standards of this subsection. Special structural provisions shall be designed using prudent current engineering practices, in accordance with Chapter 2, Section 2(b)(xviii)(E).

(2.) The foundation and abutments of the fill shall be stable under all conditions of construction. Sufficient foundation investigation and any necessary laboratory testing of foundation materials shall be performed in order to determine the design requirements for foundation stability. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(3.) The Administrator may specify additional design criteria on a case-by-case basis as necessary to meet the general requirements of this subsection.

(III) Construction Standards:

(1.) Excess spoil shall be placed in a controlled manner to:

a. Prevent pollution from leachate and surface runoff from the fill on surface water or groundwater of the State.

b. Ensure mass stability and prevent mass movement during and after construction and provide for stable drainages and hillslopes.

c. Ensure that the land mass designated as the disposal site is suitable for reclamation and revegetation compatible with the natural surroundings and approved postmining land use.

(2.) The spoil pile shall be transported and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a minimum long-term static safety factor of 1.5. The Administrator may limit the horizontal lifts to four feet or less as necessary to ensure the stability of the fill or to meet other applicable requirements.

(3.) No water impoundments or large depressions shall be constructed on the fill. Soil conservation techniques may be approved if they are needed to minimize erosion, enhance wildlife habitat or assist revegetation, as long as they are not incompatible with the stability of the fill.

(4.) Slope protection shall be provided to minimize surface erosion at the site. Diversion of surface water runoff shall conform with the requirements of subsection (e) of this Section. All disturbed areas, including diversion ditches that are not ripped, shall be vegetated upon completion of construction.

(5.) Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

(6.) Excess spoil that is toxic, acid-forming or combustible shall be adequately covered with suitable material or treated to prevent pollution of surface and groundwater, to prevent sustained combustion, and to minimize adverse affects on plant growth and the approved postmining land use.

(IV) Inspection of excess spoil piles.

(1.) The fill shall be inspected for stability by a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods:

- a.. foundation preparation, including the removal of all organic material and topsoil;
 - b. placement of diversion systems;
 - c. installation of final surface drainage systems;
 - d. final grading and revegetation.
- and

(2.) Regular inspections by the engineer or specialist shall be conducted during placement and compaction of the fill materials. The registered professional engineer shall promptly provide certified reports to the Administrator which demonstrate that the fill

has been maintained and constructed as specified in the design contained in the approved mining and reclamation plan. The report shall discuss appearances of instability, structural weakness, and other hazardous conditions. A copy of all inspection reports shall be retained at the mine site.

(j) Roads.

(i) Road classification system.

(A) Each road, as defined in Chapter 1, shall be classified as either a primary road or an ancillary road.

(B) A primary road is any road which is:

(I) Used for transporting mineral or spoil;

(II) Frequently used for access or other purposes for a period in excess of six months; or

(III) To be retained for an approved postmining land use.

(C) An ancillary road is any road not classified as a primary road.

(ii) General performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

(A) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(B) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;

(C) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(D) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

(E) The normal flow of water in streambeds and drainage channels shall not be seriously altered;

(F) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands listed in Chapter 12, Section 1(a)(v)(A); and

(G) Use nonacid- and nontoxic-forming substances in road surfacing.

(iii) Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices.

(iv) Location.

(A) No part of any road shall be located in the channel of an ephemeral stream that has the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent stream channel or any perennial stream channel unless specifically approved by the Administrator in accordance with subsections 2(c), 2(e), 2(f), 2(h), 2(i), 2(r)(ii) and 2(w) of this Chapter and Section 2(a)(i) of Chapter 19.

(B) Roads shall be located to minimize downstream sedimentation and flooding.

(v) Maintenance.

(A) A road shall be maintained to meet the performance standards of this Chapter.

(B) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(vi) Reclamation. A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(A) Closing the road to traffic;

(B) Removing all bridges unless approved as part of the postmining land use and removing all culverts unless approved as part of the postmining land use or approved for burial in place;

(C) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(D) Reshaping cut-and-fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(E) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and

(F) Scarifying or ripping the roadbed, replacing topsoil, subsoil or substitute material and revegetating disturbed surfaces in accordance with subsections 2(c)(i) through 2(c)(x) and 2(d) of this Chapter.

(vii) Primary roads.

(A) Certification. The construction or reconstruction of primary roads shall be certified in a report to the Administrator by a registered professional engineer. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan. The report shall be available for review at the mine site within 30 days following the completion of construction of each primary road.

(B) Each primary road embankment shall have a minimum static safety factor of 1.3 or meet the requirements established under Chapter 2, Section 2(b)(xix)(B).

(C) Location.

(I) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(II) Fords of intermittent or perennial streams by primary roads are prohibited unless they are specifically approved by the Administrator as temporary routes during periods of road construction.

(D) Drainage control. In accordance with the approved plan:

(I) Each primary road shall be constructed or reconstructed and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the Administrator;

(II) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;

(III) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

(IV) Culverts shall be installed, and maintained to sustain the vertical soil pressure, passive resistance of the foundation, and the weight of vehicles using the road;

(V) Natural stream channels shall not be altered or relocated without the prior approval of the Administrator in accordance with applicable Sections 2(c), 2(e), 2(f), 2(h), 2(i), 2(r)(ii) and 2(w) of this Chapter and Section 2(a)(i) of Chapter 19; and

(VI) Except as provided in (vii)(C)(II) of this section, structures for channel crossings of ephemeral streams that have the potential for sufficient flow to cause substantial environmental harm unless a downstream sediment control structure exists within the permit boundaries, any intermittent stream or any perennial stream shall be made using bridges, culverts, low-water crossings or other structures designed, constructed, and maintained using current, prudent engineering practices. The Administrator shall ensure that low-water crossings are designed, constructed and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(E) Surfacing: Primary roads shall be surfaced with material approved by the Administrator as being sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles using the road.

(viii) Exemptions concerning roads.

(A) If approval is obtained from the surface landowner to leave a road unreclaimed, an operator may request in writing to the Land Quality Division that a road be permitted to remain unreclaimed. The operator must furnish proof of the surface landowner's approval. Final decision of road reclamation will be made by the Land Quality Division Administrator.

(B) In the event that the surface landowner, a city or town, another agency of the State of Wyoming or an agency of the United States government has requested that a road not be reclaimed, no bond shall be required of the applicant for the reclamation of the road and reclamation of the road shall not be required; provided, however, that the Administrator receives a copy of the written request from the surface owner, city or town, or agency of the State or Federal Government, for retention of the road.

(m) Disposal of mine facilities.

(i) All mine facilities constructed, used or improved by the operator must be removed or dismantled and shall be reclaimed in accordance with the requirements of this Chapter when no longer needed for the operation unless it can be demonstrated to the Administrator's satisfaction that the buildings or structures will be of beneficial use in accomplishing the proposed use of the land after reclamation or for environmental monitoring.

(ii) If the operator does not wish to remove certain buildings or facilities, the operator must obtain the written consent of the surface landowner to leave the buildings or facilities intact. The operator must make a request in writing, providing written proof of the above to the Land Quality Division, that the buildings or facilities be permitted to remain intact.

(n) Mine Facilities.

(i) Mine facilities shall be operated in accordance with the permit issued for the mine or coal preparation operation to which it is incident or from which its operation results.

(ii) In addition to the other provisions of this Chapter, mine facilities shall be located, maintained, and used in a manner that:

(A) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

(B) To the extent possible using the best technology currently available;

(1.) Minimizes damage to fish, wildlife, and related environmental values; and

(2.) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.


(x) Utility installations which are not part of the surface coal mining operation. All operations shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under or through the permit area, unless otherwise approved by the Administrator or owner of the utility installation.

Conclusion

The Environmental Quality Council, in accordance with the authority granted to it by W.S. § 35-11-112 As Amended, and having complied with the provisions of the Wyoming Administrative Procedures Act, finds as follows:

1. These rules provide for the regulation of surface coal mining and reclamation operations in accordance with the requirements of P.L. 95-87.
2. These rules and regulations are as effective as those promulgated by the Secretary of the Interior pursuant to P.L. 95-87.
3. These regulations are necessary and appropriate to preserve and exercise the primary responsibilities and rights of the State of Wyoming; to retain for the State the control over its air, land, and water resources and secure cooperation between agencies of the State and Federal Government in carrying out the policy and purposes of the Environmental Quality Act.
4. These regulations are reasonable and necessary for the effectuation of W.S. § 35-11-101 through W.S. § 35-11-1304, As Amended.
5. These rules and regulations are necessary and appropriate to protect the public health, safety, welfare, and environment of the State of Wyoming.

Dated this 20 day of September, 2002



Hearing Examiner
Environmental Quality Council